Supreme Court, U.S.
FILED

04 411 SEP 23 2004

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD E. ARMSTRONG, POST-BANKRUPTCY PETITION AND AS A BENEFICIARY OF THE DONALD E. ARMSTRONG FAMILY TRUST AND THE DONALD E. ARMSTRONG CHARITABLE REMAINDER UNITRUST, *Petitioner*

v.

JUDITH A. BOULDEN, BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH, et al., *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

DONALD E. ARMSTRONG, PRO SE
INDIVIDUALLY, POST-BANKRUPTCY PETITION AND AS BENEFICIARY OF THE DONALD E. ARMSTRONG FAMILY TRUST AND THE DONALD E. ARMSTRONG CHARITABLE REMAINDER UNITRUST
P.O. Box 1059
Park City, Utah 84060-1059
(435) 649-6477

PETITION FOR A WRIT OF CERTIORARI

Petitioner Donald E. Armstrong, individually and post-bankruptcy-petition and as a beneficiary of the Donald E. Armstrong Family Trust ("Family Trust") and the Donald E. Armstrong Charitable Remainder Unitrust ("Charitable Trust") (collectively the "Trusts") ("Armstrong") respectfully petitions for a writ of certiorari to review three decisions of the Tenth Circuit Court of Appeals.

QUESTIONS PRESENTED

1. Are the filing restrictions entered against Donald E. Armstrong ("Armstrong") and others an unconstitutional denial of Armstrong's constitutional right to access to the Courts especially under these facts? Should this Court's definition of due process be altered to include ...with the possibility of a favorable ruling when warranted?

2. Is there judicial immunity for federal judges for declaratory, prospective or injunctive relief or when judges act without, or in excess of, jurisdiction?

IDENTITY OF PARTIES AND COUNSEL

Parties to the Utah District Court Opinions and Judgments

Donald E. Armstrong as
Trustee of the Donald E. Armstrong
Family Trust and Donald E. Armstrong
Charitable Remainder Unitrust

Donald E. Armstrong,
Post Bankruptcy Petition
And As Beneficiary of the Donald E. Armstrong
Family Trust and the Donald E. Armstrong
Charitable Remainder Unitrust

Lon Jenkins
LeBoeuf Lamb Greene & MacRae
1000 Kearns Building
136 South Main
Salt Lake City, UT 84101-1685

Bankruptcy and Appellate Counsel
for Kenneth A. Rushton, Trustee of the
Donald E. Armstrong Chapter 11
Bankruptcy Estate, Case No. 00-26592

Stephen J. Sorenson
Assistant United States Attorney
185 South State Street, Suite 400
Salt Lake City, Utah 84111
(801) 325-3218

Federal and Appellate Counsel to
Honorable Glen E. Clark
Honorable Judith A. Boulden
Honorable Ted Stewart

Honorable Tom R. Cornish
Honorable James A. Pusateri
Honorable Richard Bohanon
Honorable Terrence L. Michael
United States of America

TABLE OF CONTENTS

PETITION FOR A WRIT OF CERTIORARI i

QUESTIONS PRESENTED i

IDENTITY OF PARTIES AND COUNSEL ii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES vi

OPINIONS 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS 1

STATEMENT 2

BACKGROUND 4
- District Court Case 2:02CV500 5
- District Court Case 2:02CV680 6
- District Court Case 2:02CV1279 7
- The Filing Restrictions 8

REASONS FOR GRANTING THE PETITION 9

ISSUES PRESENTED 10

1. Are the filing restrictions entered against Donald E. Armstrong ("Armstrong") and others an unconstitutional denial of Armstrong's constitutional right to access to the Courts

especially under these facts? Should this Court's definition of due process be altered to include ...with the possibility of a favorable ruling when warranted? 10
The Underlying Claims 15
This Court Versus the Circuit Courts 17
Armstrong has Diligently Attempted to Comply with the Filing Restrictions 19
Pro Se Parties 20

2. Is there judicial immunity for a federal judge when the judge acts without jurisdiction or for declaratory, injunctive or prospective relief? 22
Introduction 22
Judges Acting Without, or in Excess of, Jurisdiction 23
Discretion: 27
Filing Restrictions 28
State Judges Versus Federal Judges 28

CONCLUSION 28

TABLE OF AUTHORITIES

Cases

Apache Corp. v. Moore, 517 U.S. 1217 (1996) 2

Armstrong v. Manzo, 380 U.S. 545 (1965) 2, 5, 14, 16, 25

BMW of North America, Inc. v. Gore, 517 U.S. 559, 568, (1996) 2, 15, 16, 25

Boddie v. Connecticut, 91 S.Ct. 780, 790 (U.S. 1971) 9

Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001) 2, 16

De Long v. American Protective Services, 111 S.Ct. 562, (U.S. 1990) 12

De Long v. Hennessey, 912 F.2d 1144, 1146 (C.A.9 (Cal.),1990) 12

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 24

Hamdi v. Rumsfeld, 124 S.Ct. 2633, 2648 (U.S.,2004) . 10, 30

Hansberry v. Lee, 311 U.S. 32, 40 (1940) 2, 16, 25

Huntington v. Attrill, 146 U.S. 657, 669, 13 S.Ct. 224, 36 L.Ed. 1123 (1892) 16

In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994) 10

In re Armstrong, 304 B.R. 432, 438 (10th Cir.BAP 2004) 24, 27

In re Armstrong, 305 B.R. 381 (Table) (10th Cir.BAP (Utah),2004) 27

In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991) 10

In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989) 10

In re Sindram, 111 S.Ct. 596, (U.S., 1991) 10, 11, 14, 17, 20, 22, 29

Kampfer v. Scullin, 989 F.Supp. 194, 201 (N.D.N.Y.,1997) 23

Marques v. Fed. Reserve Bank, 286 F.3d 1014, 1018 (7th Cir.2002) 26

Martin v. District of Columbia Court of Appeals, 113 S.Ct. 397, (U.S.,1992) 10

Mireles v. Waco, 112 S.Ct. 286, 288 (U.S.,1991) 23

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) 2, 5, 16, 25

Nelson v. George, 90 S.Ct. 1963, 1966 (U.S. 1970) 16

Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988) 2, 5, 14, 16, 25

Pulliam v. Allen, 104 S.Ct. 1970, (U.S.,1984) 3, 22

Rooker v. Fidelity Trust Company, 263 U.S. 413 (1923) 24
Silver v. Cormier, 529 F.2d 161, 162 (10th Cir. Colo. 1976) 11

Sindram v. Rubin, 122 S.Ct. 1218 (Mem)(U.S.,2002) 10

Sindram v. Virginia, 113 S.Ct. 594 (Mem) (U.S.,1992) 11

State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S.Ct. 1513, (U.S.,2003) 2, 9, 15, 16, 25

Tripati v. Beaman, 878 F.2d 351, 353 (C.A.10 1989)..... 11

*United States v. Bajakajian, 524 U.S. 321 (1998)*2, 15, 16, 25

Winchester Homes, Inc. v. Osmose Wood Preserving, Inc., 37 F.3d 1053, 1058 (C.A.4 (Va.),1994)..... 26

Statutes

28 U.S.C. § 1254(1)..... 1

Constitutional Provisions

U.S.C.A. Const. Amend. I 1, 2, 9

OPINIONS

The Utah District Court opinion, order and final judgment dismissing Case 2:02CV0500 entered on December 23, 2002. (Final Judgment and Memorandum and Opinion are reproduced as App. A and B. All future reproduced documents shall be referred to as "App. Letter".) The Tenth Circuit Court of Appeals decision affirming the dismissal entered on May 27, 2004 in 03-4006 (not reported; App. C). The Utah District Court Order dismissing Case 2:02CV0680 entered August 26, 2003 (App. D). The Tenth Circuit Court of Appeals decision affirming the dismissal and imposing filing restrictions entered on May 27, 2004 in 03-4222 (not reported; App. E); The Utah District Court Order dismissing Armstrong's Petition for Writ of Mandamus without review of merits and imposing filing restrictions in Case 2:02CV1279 entered April 25, 2003 (App. F). The Tenth Circuit Court of Appeals decision affirming the dismissal entered on May 27, 2004 in 03-4120 (not reported; App. G).

JURISDICTION

The date on which the United States Court of Appeals decided my cases in 03-4006, 03-4120 and 03-4222 was May 27, 2004. No petition for rehearing was filed in the cases. An extension of time to file the petition for a writ of certiorari was granted to and including September 24, 2004 on August 23, 2004 in Application No. 04A158.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

The First Constitutional Amendment provides in relevant part: "Congress shall make no law ……..to petition the Government for a redress of grievances." *U.S.C.A. Const. Amend. I* (App. H at 41a)

STATEMENT

This Court has consistently upheld the basic due process issues of jurisdiction, notice and a full and fair opportunity to be heard before an unbiased and impartial tribunal. *Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)* ("*Mullane*"); and *Hansberry v. Lee, 311 U.S. 32, 40 (1940)* ("*Lee*"); *BMW of North America, Inc. v. Gore, 517 U.S. 559, 568, (1996)* ("*BMW*"); *State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S.Ct. 1513, (U.S.,2003)* ("*State Farm*"); *United States v. Bajakajian, 524 U.S. 321 (1998)* ("*Bajakajian*"); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001)* ("*Cooper*"); *Apache Corp. v. Moore, 517 U.S. 1217 (1996)* ("Apache"); *Armstrong v. Manzo, 380 U.S. 545 (1965)* ("*Manzo*"); *Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988)* ("*Peralta*").

Armstrong suggests the Court should consider that the standard for due process should be updated to include a "full and fair opportunity to be heard before an unbiased and impartial tribunal with the true opportunity for affirmative relief if warranted." Armstrong's situation will illustrate that courts go through the motions of having hearings but that there is no real possibility of a favorable ruling for Armstrong—or other pro se parties. Going through the motions with the certainty of a ruling against pro se parties is not due process.

The Utah Federal Courts and the Tenth Circuit Court of Appeals have entered and affirmed filing restrictions against Armstrong that completely deny Armstrong the constitutional right to access to the courts. *U.S.C.A. Const. Amend. I* These filing restrictions do not include specific findings against Armstrong but require that Armstrong cannot file any pleadings without permission. The "filing restrictions" contain two sentences and do not provide any standard for Armstrong to address.

Under the facts of these cases, Armstrong is completely denied access to the courts. These filing restrictions apply to any claim or issue Armstrong might present whether it has ever been presented or addressed in any other proceeding. In fact, the Utah courts have allowed Armstrongs' adversaries to pursue Armstrong while denying Armstrong the right to even defend himself. Finally, Judge Cornish amended the permanent injunction in the 26592 plan of reorganization to allow Armstrong to at least defend himself if Steppes files an adversary proceeding. (App. I at 42a) Apparently, this means that Armstrong cannot defend himself if Steppes files a federal district court case or state court case against Armstrong. This is unconstitutional.

Armstrong has sought permission to file numerous pleadings according to these filing restrictions only to be refused continually *if the Court even responds.*

This Court held that state court judges are not protected by judicial immunity for declaratory, prospective and injunctive relief. *Pulliam v. Allen, 104 S.Ct. 1970, (U.S.,1984)("Pulliam")* This Court has not addressed whether federal judges are, or are not, protected by judicial immunity for declaratory, prospective and injunctive relief. Armstrong can find no basis to treat federal judges differently than state judges.

This Court, and lower courts, all agree that judges are not immune from actions taken "in the absence of all" jurisdiction. Some courts hold that judges' actions taken "in excess of" jurisdiction are immune. There is little, or no, difference between actions taken without jurisdiction or in excess of jurisdiction. It is essential for this Court to address whatever difference there is between "without jurisdiction" and "in excess of jurisdiction". Armstrong submits that an action taken in excess of jurisdiction is no different than an action taken without jurisdiction. Certainly, there is no difference to the party affected and

the court has acted where the court had no jurisdiction to act in either situation.

BACKGROUND

All this litigation stems from a case originating in Texas. Steppes Apartments, Ltd. ("Steppes") purchased the Steppes Apartments from the Trusts on September 29, 1994 executing notes and deeds of trust in favor of the Trusts for 90% of the purchase price along with a personal guaranty from John L. Feece ("Feece") in favor of the Trusts.

A Modified Judgment was entered on May 8, 1997 that specifically excludes liability against Armstrong, individually. The Modified Judgment contains zero actual damages, but awards over $2.8M in exemplary damages. Steppes filed an action in Utah Federal District Court as Case No. 2:97-CV-0663ST (the "Fraudulent Transfer Action") against the Family Trust and Armstrong, individually, asserting the same claims Steppes and Feece litigated and/or could have litigated in Texas. This is the very first time that Armstrong, individually, was ever named in any proceeding.

Steppes filed lis pendens on all property Armstrong, or any entity Armstrong had any interest in, with the specific provision that the lis pendens' also affected any property Armstrong could acquire in the future. These lis pendens caused two companies and then Armstrong, individually, to declare bankruptcy. Armstrong filed for protection under Chapter 11 of the Bankruptcy Code on March 10, 2000 in what became Utah Bankruptcy Case 00-26592 ("26592").

On September 7, 2001, the Honorable Glen E. Clark ruled that Steppes May 6, 1998 lis pendens' were wrongful liens under the Utah Wrongful Lien Act. Despite Judge Clark's September 7, 2001 Order, Steppes and Feece still refused to release their May 6, 1998 wrongful liens and Armstrong still cannot obtain a

hearing on Armstrong's post-bankruptcy-petition property rights.

Steppes' May 6, 1998 wrongful liens affected Armstrong, individually and post-bankruptcy-petition and as a Beneficiary of the Trusts, outside of the Armstrong Bankruptcy Estate, and deny Armstrong, in all capacities, his Fifth and Fourteenth Amendment property rights.

Armstrong filed numerous proceedings in several different courts seeking a hearing on: the validity of the Modified Judgment as it affects Armstrong personally; the validity of Steppes wrongful liens; the validity of Steppes' Utah Foreign Judgments and California Sister State Judgments; the unconstitutionality of the penal awards in the Modified Judgment; and the lack of jurisdiction and due process involved in the Modified Judgment and the Utah Foreign Judgments. The Beneficiaries of the Trusts, including Armstrong as a Beneficiary, have never been provided notice of any kind or given any opportunity to defend themselves as to any of these claims and actions by Steppes and Feece. *Mullane*, *Manzo* and *Peralta* Numerous Utah federal judges, Utah and California bankruptcy judges, the Tenth Circuit Court of Appeals and Utah State Court judges refuse to provide Armstrong the right to discovery, due process or any hearing on the merits. These issues have never been addressed on the merits and there is no final judgment on these issues. Most of these issues warrant a *de novo* review which has never been done.

Armstrong has lost his reputation business, financial stability, assets, home, credit rating, career, freedom, right to own property and many other constitutionally protected rights as a result of the various courts denying Armstrong his right to a hearing.

DISTRICT COURT CASE 2:02CV500: Armstrong filed a complaint against Judges Glen E. Clark, Judith A.

Boulden, Ted Stewart alleging that Judges Clark, Boulden and Stewart acted without jurisdiction. Armstrong was seeking monetary damages, declaratory relief and injunctive relief. Judges Clark and Boulden continually refused to recuse themselves from underlying proceedings; however they both recused themselves voluntarily on June 17, 2002. [In fact, there have been over 60 voluntary recusals in these proceedings.(App. J)]

The judges were represented by the United States Attorney's Office and filed motions to dismiss based on judicial immunity. Judge Conway granted the Defendants' motion to dismiss based on judicial immunity, but acknowledged one exception to judicial immunity was a lack of jurisdiction. (App. B at 9a)

DISTRICT COURT CASE 2:02CV680: Armstrong filed an action against the Judge Tom R. Cornish for entering orders affecting Armstrong and others without jurisdiction. Judge Cornish, through the United States Attorney's Office, filed a motion to dismiss that Judge Benson granted based on judicial immunity.

Judge Cornish did request filing restrictions that Judge Benson granted. (App. D at 27a lines 9-15)

Again, there was no hearing on these filing restrictions. In the August 27, 2003 Order the Clerk is to lodge ALL pleadings filed by Armstrong. This is confirmation that Armstrong cannot file any pleadings regardless of whether they involve the Bankruptcy Court or have ever been presented or addressed previously.

The two orders contain the entire filing restrictions and provisions for Armstrong to be able to file any pleadings whatsoever. Armstrong has filed at least 12 motions (App. K at 48a) seeking the Court's permission including to pursue cases that are not involved with the Bankruptcy Estate but do relate to post-bankruptcy petition violations of the bankruptcy automatic stay and discharge. Judge Benson denied all

of Armstrong's motions except a portion of one motion relating to a case where the presiding judge was already proceeding with the case. (Case 2:01CV0642) Armstrong has effectively been denied the right to appear in the Utah district court for any reason except where parties are seeking relief against Armstrong.

DISTRICT COURT CASE 2:02CV1279: Armstrong filed an Ex Parte Emergency Motion for Withdrawal of the Reference to the Bankruptcy Court relating to 26592 according to 28 U.S.C. § 157(d) on November 21, 2002. Under the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, United States Code, Federal Rules of Civil Procedure, and the Utah District Court local rules the bankruptcy judge has the duty to transmit a motion to withdraw the reference to the district court to be heard. DUCivR 83-7.2(b and f)[1]

Rather than transmit Armstrong's Motion to Withdraw the Reference to the District Court, Judge Cornish scheduled a hearing for December 9, 2002. Armstrong submitted a Petition for Writ of Mandamus on December 13, 2002 along with a motion to proceed in forma pauperis. Judge Benson denied Armstrong's motion to proceed in forma pauperis the same day; however, Armstrong never received the order. Kenneth A. Rushton ("Rushton"), as bankruptcy trustee of 26592, and Steppes filed responses to Armstrong's petition. Steppes sought reimbursement for attorneys' fees and costs that Judge Benson denied. Neither Rushton nor Steppes sought an injunction for filing restrictions.

Judge Benson entered an order on April 28, 2003 dismissing Armstrong's petition for writ of mandamus without addressing the merits AND entered a simple filing restriction. (App. F at 33a lines 4-21)

---

[1] The Bankruptcy Court entered an order granting Kenneth A. Rushton's ("Rushton") Revised Plan of Reorganization on January 31, 2002 granting Armstrong a statutory bankruptcy discharge.

While Judge Benson referred to proceedings involving the Bankruptcy Court in the injunction, the Utah District Court Clerk will not accept ANY pleadings from Armstrong on ANY matter unless a specific order has been entered in a particular case allowing Armstrong to proceed. The Court Clerk merely "receives" Armstrong's pleadings and places them in a file drawer. There is no determination of whether Armstrong's pleadings relate to the Bankruptcy Court. There is also no docket so Armstrong cannot track the progress of any motion for permission.

Judge Benson unilaterally entered the injunction and filing restrictions against Armstrong without any pleadings, notice or hearing. (App. G at 39a) The Tenth Circuit held that the filing restrictions were satisfactory but that Armstrong did not receive notice or an opportunity to object. However, the Tenth Circuit reconfirmed the filing restrictions in Case 03-4222. (App. E at 30a-31a and App. G at 39a)

THE FILING RESTRICTIONS: Judge Benson entered filing restrictions against Armstrong in 2:02CV1279. There was no request for filing restrictions, no hearing or any other notice of the filing restrictions in Case 2:02CV1279. Judge Cornish did seek filing restrictions against Armstrong in Case 2:02CV0680.

Armstrong filed motions seeking Judge Benson's permission to pursue actions based on the filing restrictions. Judge Benson denied or refused all but one of Armstrong's requests. In case 2:03CV238 Judge Paul Cassell ordered that Steppes and Rushton could seek sanctions against Armstrong. Judge Cassell easily obtained permission from Judge Benson for Armstrong to file one pleading only in response to Rushton's sanctions. Judge Cassell did not consider Armstrong's rights or defenses and granted Rushton sanctions.

Armstrong filed one motion for permission to pursue two cases that no longer relate to the bankruptcy case and Judge Benson denied Armstrong's motion without prejudice. Armstrong filed a second more comprehensive motion that Judge Benson has not addressed at all.[2] This proves that the filing restrictions are purely discretionary and completely preclude Armstrong's constitutional right to access to the courts.

Judges Boulden, Clark and Cornish have all entered permanent injunctions against parties that have never been noticed and where the bankruptcy courts had no jurisdiction. (This will be addressed in other petitions.)

REASONS FOR GRANTING THE PETITION

This case presents compelling questions for this Court. The first question is whether the permanent filing restrictions entered in the United States District Court of the District of Utah are an unconstitutional deprivation of Armstrong's constitutional right to access to the courts. *U.S.C.A. Const. Amend. I* A subpart of that question is the almost unilateral application of filing restrictions against parties that are representing themselves. Virtually all filing restrictions are entered against pro se parties that are a clear class of persons protected by the Equal Protection Clause. *Boddie v. Connecticut, 91 S.Ct. 780, 790 (U.S. 1971)*

Essentially, these filing restrictions label a party representing themselves as an "unsavory person" preventing any full and fair opportunity to be heard on the merits for the rest of the party's life. *State Farm* at 1523 "A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business." This is clear discrimination

---

[2] Armstrong is appearing in three Utah federal court cases where the presiding judge lifted her own stay to allow the cases to proceed.

against parties representing themselves. The First Amendment does not state that ALL parties are entitled to access to the courts ***except*** persons judges use their discretion to label as unworthy or any other group such as parties representing themselves.

This Court continues to uphold ALL parties' constitutional rights despite courts attempting to erode those rights. *Hamdi v. Rumsfeld*, 124 S.Ct. 2633, 2648 (U.S.,2004) ("These essential constitutional promises [referring to due process and notice issues] may not be eroded.")

ISSUES PRESENTED

1. **ARE THE FILING RESTRICTIONS ENTERED AGAINST DONALD E. ARMSTRONG ("ARMSTRONG") AND OTHERS AN UNCONSTITUTIONAL DENIAL OF ARMSTRONG'S CONSTITUTIONAL RIGHT TO ACCESS TO THE COURTS ESPECIALLY UNDER THESE FACTS? SHOULD THIS COURT'S DEFINITION OF DUE PROCESS BE ALTERED TO INCLUDE ...WITH THE POSSIBILITY OF A FAVORABLE RULING WHEN WARRANTED?**

This Court has considered filing restrictions in few cases. *In re Sindram, 111 S.Ct. 596, (U.S., 1991)("Sindram 1"), Sindram v. Rubin, 122 S.Ct. 1218 (Mem)(U.S.,2002); In re Anderson, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); In re Demos, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); In re McDonald, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989); Martin v. District of Columbia Court of Appeals, 113 S.Ct. 397, (U.S.,1992)* Despite the filing restrictions imposed on Michael Sindram in *Sindram 1*, Mr. Sindram has continued to file numerous petitions in this Court. Sindram continues to file motions to proceed in forma pauperis that this Court continued to deny always giving Sindram the opportunity to pay the filing

fee and comply with Rule 33.1. *Sindram v. Virginia, 113 S.Ct. 594 (Mem) (U.S.,1992)* Many of this Court's cases entering filing restrictions were split decisions with strong dissents supporting the constitutional right to access to the courts. *Sindram 1* at 598 This Court has never entered an order that held that a party, any party, cannot file a pleading with this Court unless this Court allows the party after a request for permission. This Court has always held that if a party pays the filing fee and complies with Rule 33.1 they may proceed.

In contrast, the lower courts, especially the Tenth Circuit, have held that the constitutional right to appear in court is not absolute. *Tripati v. Beaman, 878 F.2d 351, 353 (C.A.10 1989)* In an earlier case the Tenth Circuit acknowledged that access to the courts is a constitutional right that cannot be "infringed upon or burdened". *Silver v. Cormier*, 529 F.2d 161, 162 (10th Cir. Colo. 1976) However, in relation to parties representing themselves, the Tenth Circuit constantly "infringes upon and burdens" pro se parties rights to access to the courts. It is clear that the rules and the law are different for the class of persons appearing pro se---- these parties do not have these constitutional rights. However, if these same parties hired attorneys, then everything would be acceptable. This is blatant discrimination against pro se parties that requires this Court's intervention and direction.

Armstrong suggests that it is appropriate for this Court to address whether, in fact, the constitutional right to access to the courts is absolute or not. Armstrong suggests that the first step in denying pro se parties the constitutional right to access to the courts is for these courts, such as the Tenth Circuit, to determine that these rights are not absolute thereby turning the right to appear in court into a discretionary matter rather than a constitutional right. This opens the door for further

restrictions completely denying Armstrong the right to access to the court at all.

Filing restrictions are a relatively new concept in the judicial system. The majority of the filing restrictions decisions Armstrong located began in 1990. One of the earlier cases was in the ninth circuit. *De Long v. Hennessey, 912 F.2d 1144, 1146 (C.A.9 (Cal.),1990)* The Ninth Circuit remanded the case for further consideration and outlined the procedures for considering filing restrictions. This Court denied review. *De Long v. American Protective Services, 111 S.Ct. 562, (U.S. 1990)* The Ninth Circuit held that filing restrictions should rarely be filed, that the litigant must be provided with an opportunity to object, there must be an adequate record and findings illustrating the facts illustrating frivolous filings and at least considering the merits and any restrictions must be narrowly tailored to previously addressed issues rather than having no boundaries.

Armstrong conducted a search of federal circuit cases through WestLaw and located 95 cases addressing filing restrictions. Virtually all of the cases related to pro se parties. Of the 89 cases, 62 or 69% were from the Tenth Circuit. The second, third, fourth, eighth and eleventh circuits had zero cases. (App. L at 50a) In eleven cases, no filing restrictions were entered or filing restrictions were reversed. All five of the ninth circuit's cases involved no filing restrictions or the reversal of filing restrictions. All of the cases involved only pro se parties illustrating the blatant discrimination against pro se parties. Many of the filing restrictions specifically provided that these same parties could appear through attorneys. **In other words, these same parties could file the same claims as long as they could hire attorneys---as long as they could contribute to the judicial system financially. However, these parties**

could not present the same claims on their own. This is clear discrimination.

The filing restrictions here do not meet any of these tests. The Utah courts and the Tenth Circuit entered filing restrictions in numerous cases against Armstrong. The orders at issue here are only some of the orders entering filing restrictions or staying Armstrong's claims and rights.

Clearly there is a conflict between the circuits on the constitutionality of pro se parties' rights to access to the courts, the extent of filing restrictions, the tests for filing restrictions, what standard of review must be applied to filing restrictions and all other matters relating to filing restrictions. This Court has been consistent in its rulings in honoring the constitutional right to access to the courts and in allowing all parties, including Michael Sindram, to continue to file motions to proceed in forma pauperis and to be heard on the merits by paying the filing fee and complying with the rules. The Tenth Circuit's filing restrictions completely deny Armstrong the constitutional right to access to the courts. The procedure of filing a motion for "permission" to file any pleading is merely going through the motions knowing the outcome will be to deny Armstrong access to the courts.

Under the facts of the underlying cases, this is clearly a situation of "going through the motions" with the clear intent of never allowing Armstrong to appear in court much less be heard before an unbiased and impartial tribunal and further much less to actually have the opportunity for a favorable ruling if warranted.

Armstrong interprets the Court's decisions on filing restrictions to mean that a party, any party, is not to abuse the legal system or the Court's precious resources relitigating issues that have already been resolved. *Sindram I* Many of the decisions on filing restrictions

refer to these same tests and issues of whether the matters presented have been addressed on the merits elsewhere. The filing restrictions against Armstrong in the Tenth Circuit are not related to whether the specific issues have been fully resolved or even addressed elsewhere. The Tenth Circuit filing restrictions place onerous burdens on pro se parties' ability to appear in court at all. The Tenth Circuit restrictions have been extremely effective in preventing pro so parties from being heard at all. The Tenth Circuit restrictions require Armstrong to pay sanctions from other cases whether or not they are related to the existing issues.

The Utah District Court filing restrictions have no limits. There is no factual basis for the restrictions. There is no limitation on the restrictions to cases that have already been decided on the merits. There are no specific provisions for what Armstrong must do or show to be able to file any pleadings. Armstrong's rights to appear in court have been converted to discretionary consideration, with no standards. This is not a full and fair opportunity to be heard by any stretch of the imagination. Essentially, these filing restrictions shift the burden of the constitutional due process right to access to the court to an unknown burden on the pro se party to seek some judge's blessing to be able to appear in court at all. This is unconstitutional. This Court addressed this shifting of burdens in the past. *Manzo* at 551 and *Peralta* at 87

> "As we observed in *Armstrong v. Manzo, 380 U.S., at 552, 85 S.Ct., at 1191*, only 'wip[ing] the slate clean ... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.' The Due Process Clause demands no less in this case."

This situation is exactly the same----Armstrong cannot appear in the Utah federal courts without the discretionary blessing of a judge. Armstrong's claims are never addressed. The burden is on Armstrong to somehow convince one judge that Armstrong should be able to present these claims based on one motion without any discovery or presentation. There are no guidelines for Armstrong to follow to address the court and there are no standards for the court to consider Armstrong's requests. This is unconstitutional.

THE UNDERLYING CLAIMS: The Respondents will argue that Armstrong has had his day in court and that Armstrong is not entitled to be heard even in this Court. However, Armstrong's arguments and issues have never been addressed <u>on the merits</u>. The evidence of this is that there are no final decisions addressing these issues on the merits. Specifically, any review of potentially unconstitutional penalties must be reviewed *de novo*. There are lots of orders saying the issues were resolved elsewhere but there are no orders actually addressing the issues—especially *de novo*. Armstrong challenges the Respondents to provide any such orders.

The Respondents rely on the Texas Litigation as a resolution of these issues where Armstrong, individually, was not noticed and was not a party. Armstrong never had any notice that Armstrong's individual rights could be affected and yet Armstrong has been completely destroyed by the orders in the Texas Litigation even though the Modified Judgment specifically excludes liability against Armstrong individually.

Some of Armstrong's claims are:

1) That statutory and common law penalties of over $2.8M in relation to zero actual damages are unconstitutionally excessive under the Fifth, Eighth and Fourteenth Amendments. *BMW*; *State Farm* and *Bajakajian* This Court held that a review of potentially

excessive penalties must be reviewed *de novo*. *Cooper* and *Bajakajian* There has never been any review of these penalties by any court much less *de novo*. The Texas courts held that the Trusts waived the right to present these arguments and prevented the Beneficiaries and Armstrong from challenging the penalties as well even though the Beneficiaries were not noticed of the trial and that Armstrong was never noticed at all. *Manzo* and *Peralta* Parties such as the Beneficiaries and Armstrong that did not receive notice cannot have intentionally relinquished any right.

2) That statutory and common law penalties of any amount are unconstitutional in relation to zero actual damages. *BMW*, *State Farm* and *Bajakajian*

3) That statutory penalties are not entitled to full faith and credit. *Huntington v. Attrill, 146 U.S. 657, 669, 13 S.Ct. 224, 36 L.Ed. 1123 (1892); Nelson v. George, 90 S.Ct. 1963, 1966 (U.S. 1970)* and *State Farm* at 1522

4) That the Beneficiaries and Armstrong cannot be bound by the Modified Judgment when they did not have any notice prior to trial and that the Beneficiaries and Armstrong are entitled to new trials rather than show cause hearings. *Mullane, Lee, Manzo* and *Peralta*

5) That non-parties to a bankruptcy cannot be bound by bankruptcy court orders since they were not noticed, the bankruptcy court had no jurisdiction and because bankruptcy courts cannot affect parties unless there is a direct impact on the bankruptcy estate.

6) That Steppes' lis pendens' are violations of Utah law and that Armstrong is entitled to damages against Steppes including post-bankruptcy petition. Armstrong already obtained judgments for damages for Steppes' lis pendens' in excess of $63M against Steppes' co-conspirators Mark Ladeda and Paula Ziegler. (App.

M at 54a) Judge Glen Clark ruled that Steppes' lis pendens' are wrongful liens in a case filed by bankruptcy trustee Roger G. Segal while always denying Armstrong's right to even present these exact same arguments and claims.

These arguments are not frivolous. They have never been addressed on the merits. Armstrong has presented these arguments numerous times expecting the courts to address the merits only to be disappointed and refused each time.

THIS COURT VERSUS THE CIRCUIT COURTS: As stated above, this Court has been loathe to enter filing restrictions with the strongest filing restriction being to order that a continual filer pay the filing fee and comply with Rule 33.1. *Sindram I* Michael Sindram continues to file motions to proceed in forma pauperis and refuses to pay any filing fees yet this Court does not order that Mr. Sindram must seek permission to even file any pleadings in this Court.

In contrast, several of the circuit courts enter filing restrictions with great ease while other circuits enter few, or no, filing restrictions. The first, sixth, seventh, ninth and tenth circuits have entered filing restrictions. Even in these circuits there are decisions holding that certain filing restrictions are unconstitutional or inappropriate. (App. G at 34a) The second, third, fourth, fifth, eighth and eleventh circuits have entered few or no filing restrictions. There may well be cases in these other circuits that do not appear in Armstrong's specific search of "filing restrictions".

The reality of these filing restrictions is to prevent these pro se parties from ever being heard on the merits. One such example is the litigation involving Richard deOnativia ("deOnativia"). Armstrong was granted a bankruptcy discharge in the January 31, 2002 Confirmation Order. (App. N at 55a) Despite the

statutory automatic stay and statutory discharge, deOnativia has taken, and continues to take, Armstrong's post-bankruptcy petition proceeds from a rental property in Georgia every month. DeOnativia filed an action against Armstrong in October 2001 well after the March 10, 2000 bankruptcy filing. The Georgia Real Estate Commission ordered the surrender of deOnativia's Georgia real estate license for deOnativia's violations of Georgia real estate law. Armstrong has asserted the statutory automatic stay and discharge in the Georgia case, the Georgia federal court, the Utah bankruptcy court and the Utah district court to no avail. Armstrong has attempted to be heard on these issues since late 2001 and has yet to be heard. Armstrong filed two motions to Chief Judge Dee Benson on these issues. Judge Benson denied Armstrong's first motion stating that Armstrong had not met the burdens imposed in the filing restrictions without any guidance as to what those burdens were. (App. O at 56a) Judge Benson has not addressed Armstrong's second motion at all. This is a complete denial of Armstrong's right to access to the courts. Armstrong's claims for violations of the automatic stay and discharge are not frivolous, have never been addressed on the merits and there is no order adjudicating the issue.

A Utah state judge held recently that most of the time when a party files a cross-motion for summary judgment the original motion and the cross-motion are heard at the same time but that it was the court's discretion to refuse to consider Armstrong's cross-motion. That case is now 17 months old and the state court has refused to consider any of Armstrong's substantive pleadings or motions at all while only considering the attorney defendants' pleadings. (Case No. 030907240) This is a clear denial of access to the

courts and another example of how courts "go through the motions" with a predetermined outcome.

The circuit courts continue to enter filing restrictions far in excess of this Court's filing restrictions. This court refused certiorari in *De Long v Hennessey* where the Ninth Circuit remanded a case and limited filing restrictions. Most or all of these decisions limiting pro se parties right to appear are intended to, and do, completely eliminate these pro se parties ability to be heard on the merits. It is critical that this Court reviews these issues and, at the very least, provide some standards and guidance to the courts. At this point there is no standard and no guidance with the result that pro se parties are completely denied the right to be heard.

ARMSTRONG HAS DILIGENTLY ATTEMPTED TO COMPLY WITH THE FILING RESTRICTIONS: Armstrong has attempted diligently to comply with the Utah filing restrictions and has constantly been turned down. Armstrong has filed numerous motions for permission to file pleadings that have generally been denied except in limited instances. The one time Judge Benson allowed Armstrong to proceed, the presiding judge in the case had already reinstated the case. In another case, Utah district court judge Paul Cassell held a hearing and invited Armstrong's adversaries, Rushton and Steppes, to file motions for sanctions. Judge Cassell held that Armstrong could respond to Rushton and Steppes' motions for sanctions. Armstrong informed Judge Cassell of Judge Bensons' filing restrictions. Judge Cassell obtained an order from Judge Benson in one day allowing Armstrong to file one response to Rushton and Steppes' sanctions. It is apparently acceptable for Armstrong to have the opportunity to oppose sanctions and rulings against Armstrong but these courts will never allow Armstrong to pursue Armstrong's claims or defenses. The case before Judge Cassell is a case where

Armstrong is attempting to present Armstrong's claims and defenses as offsets to Rushton and Steppes' constant onslaught against Armstrong. Judge Cassell and Judge Cornish have both ruled that Armstrong cannot present his claims and defenses as offsets but that Rushton and Steppes can seek additional sanctions against Armstrong.

Clearly, there is no opportunity for Armstrong to receive any favorable ruling when the courts place these unbearable and limiting restrictions on Armstrong's ability to even present his claims.

PRO SE PARTIES: Every one of these cases involving filing restrictions is against pro se parties. (App. L at 50a) Pro se parties are clearly a class of citizens. Apparently, what these courts are saying is that as long as a party has the money to pay an attorney to file their pleadings any action is acceptable, while if a party representing themselves files certain cases it is unacceptable and must be restricted. The only distinction is whether the party is representing himself/herself or not.

Of course, one argument is that allegedly attorneys will refuse to file these pleadings. First, there is no guaranty of that. However, as this Court noted in *Sindram 1*, attorneys file many frivolous actions. *Sindram I at 598* Please consider these examples. A purchaser of real property refuses to provide proof of insurance and pay reserves for insurance and property taxes and yet sues the seller claiming the purchaser somehow doesn't have to comply with the transaction documents. Or another situation where a borrower claims they are attempting to refinance a loan with the specific intent of creating a claim to obtain the real property for free through a manufactured usury claim. Or another situation where a bankruptcy trustee spends literally hundreds of thousands of dollars to gain approval of a chapter 11 bankruptcy plan of

reorganization knowing there would be no distribution to unsecured creditors much less distributions greater than available under a conversion to chapter 7. This estate did have over $1M in equity prior to this trustee's actions that could have paid all legitimate unsecured creditors in full. The courts would never consider sanctions or filing restrictions against bankruptcy trustees or parties represented by attorneys----the filing restrictions are limited to pro se parties. (App. L at 50a)

It is critical that this Court review these filing restriction matters and provide some standards and tests. Armstrong understands how rare it is indeed that this Court grant a petition for writ of certiorari especially for a party representing themselves. However, this is the one situation where it is most appropriate. This case is about the courts singling out pro se parties and preventing them from appearing in court and being heard on the merits. This type of case would most likely only be filed by pro se parties. Armstrong well knows Armstrong's own limitations in the legal world and hopes that amicus briefs could be invited to make up for the lack of Armstrong's knowledge and legal experience.

Courts are using these filing restrictions more and more and especially against pro se parties. There are no standards, tests or guides. The few courts that do address the constitutional issues focus on the issue that filing restrictions may be appropriate in relation to issues that have already been decided elsewhere or previously. Res judicata and preclusion principles are in place for just this specific issue. It is clear that the circuit courts will continue to use these filing restrictions to rid themselves of parties representing themselves. The Tenth Circuit, and others, is clearly entering filing restrictions that prevent pro se parties from appearing in court. These restrictions are in severe contradiction to this court's order in *Sindram I* and other cases. The clear effect of

the Tenth Circuit filing restrictions is to completely prevent pro se parties from appearing in court. This Court has held that the only requirement to appear in court is to pay filing fees and follow the rules and procedures. *Sindram I* The Tenth Circuit has converted the entire constitutional right to appear in court into a discretionary matter with no standards or rules. In Armstrong's experience this is merely a ploy to avoid addressing Armstrong's issues at all. The courts have denied almost all of Armstrong's motions for permission to pursue claims whether these claims have ever been addressed in any prior proceeding or not. The net result is a clear violation of Armstrong's constitutional right of access to the courts.

2. IS THERE JUDICIAL IMMUNITY FOR A FEDERAL JUDGE WHEN THE JUDGE ACTS WITHOUT JURISDICTION OR FOR DECLARATORY, INJUNCTIVE OR PROSPECTIVE RELIEF?

INTRODUCTION: Utah Bankruptcy judges Clark, Boulden and Cornish and Utah District Court judge Stewart (the "Judges") have all entered orders without jurisdiction affecting parties they had no jurisdiction over. Armstrong filed actions against these judges, and others, for prospective injunctive relief, damages, for denying Armstrong's constitutional right to access to the courts and for acting without jurisdiction negatively impacting Armstrong and others. The Tenth Circuit held that federal judges are absolutely immune from any type of action including acting without jurisdiction and prospective relief.

This Court addressed almost the exact same issues in 1984 involving a state court magistrate judge. *Pulliam* Justice Blackman held that the state court judge was not protected by immunity for prospective injunctive relief or for costs associated with a § 1983 claim. Four

justices dissented. The Federal circuit courts have acknowledged that this Court has not addressed the specific issues of absolute immunity for federal judges for prospective, declaratory or injunctive relief. Federal statutes were passed precluding claims for costs and attorney fees against federal judges in some situations. *Kampfer v. Scullin, 989 F.Supp. 194, 201 (N.D.N.Y.,1997)*

It is important for this Court to address these issues in relation to federal judges. Armstrong requests this Court to hold that federal judges are not judicially immune from actions for prospective, declaratory or injunctive relief and are not immune from actions taken without, or in excess of, jurisdiction and remand these cases to the lower courts for discovery and trials.

JUDGES ACTING WITHOUT, OR IN EXCESS OF, JURISDICTION: All courts agree that when judges act without jurisdiction judges are not immune. *Mireles v. Waco, 112 S.Ct. 286, 288 (U.S.,1991)* ("*Mireles*") (citing *Stump v. Sparkman, 435 U.S., at 360, 98 S.Ct., at 1106 (U.S. 1978)* ("*Stump*")) Judge Conway (District of New Mexico) also stated that federal judges are not immune from actions taken in the absence of all jurisdiction. (App. B at 9a) Judge Conway also held that acts taken in excess of jurisdiction are protected by judicial immunity while acts taken in the absence of jurisdiction are not. Judge Conway found that Armstrong did not meet the burden of properly pleading facts sufficient to obtain an injunction at a motion to dismiss stage and held that judges are absolutely immune from claims for injunctive relief.

Judges Clark, Cornish and Boulden entered orders that affect parties the bankruptcy court had no jurisdiction over by entering injunctions that affect Armstrong, the Trusts and any other entity Armstrong is involved in and protecting the Steppes' Parties as defined

in the Revised Plan of Reorganization including Steppes, John Feece, Rosalie Feece, Baxter Holdings, Inc., Jeffrey L. Shields, Zachary T. Shields, Callister Nebeker & McCullough, Robert Bodoin, Hill Gilstrap, Frank Hill, Frank Gilstrap, Sal Espino, Chris Harris, Ben Levinson, Victor Villaplana, Dennis Wickham, Elizabeth Smith, Seltzer Caplan McMahon & Vitek, and any and all other attorneys of Steppes and their law firms and all of their employees. None of these parties except Steppes ever filed a proof of claim and were not parties in interest in 26592.

The BAP found that Judge Cornish acted without, AND in excess of, jurisdiction. *In re Armstrong, 304 B.R. 432, 438 (10th Cir.BAP 2004)* There can be no question that Judge Cornish is not immune from any claims Armstrong has for acting without jurisdiction.

Judge Stewart entered orders that affect the Family Trust when the Family Trust's rights were stayed in the Fraudulent Transfer Case and when the Family Trust was not noticed of the default proceedings. Armstrong is the Trustee of the both Trusts and a post-bankruptcy petition beneficiary of both Trusts. The Family Trust did not default but Judge Stewart orally stated that he would enter default against the Family Trust.

Federal courts do not have jurisdiction to review or modify state court judgments based on the Rooker Feldman Doctrine. *District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983)*; *Rooker v. Fidelity Trust Company, 263 U.S. 413 (1923)* All of the judges entered orders affecting and modifying state court judgments despite having no jurisdiction based on the *Rooker-Feldman Doctrine*.

There is no question these judges acted without jurisdiction where immunity does not protect them.

Armstrong is entitled to pursue his claims against the Judges and Armstrong must be given that opportunity.

Judges and attorneys make the rules, interpret the rules and allegedly enforce the rules. There are clearly two factions here---the "legal system" including all judges and attorneys versus parties representing themselves. When one side makes, interprets and enforce the rules the opportunity for bias, prejudice and abuse is excessive. Pro se parties' only protections are found in the United States Constitution and the rules that are to apply to all parties, including pro se parties. Judges use "discretion" to bend the rules to prevent pro se parties from even appearing in court. The vast majority of all this mass of litigation is not about the merits of Armstrong's claims but only about whether Armstrong can even present Armstrong's claims *and defenses*. These Judges have been entirely successful in preventing any consideration of Armstrong's issues. This is the most blatant denial of Armstrong's constitutional rights to access to the courts; constitutional rights that this Court has protected vigorously. *Mullane, Lee, Manzo, Peralta, BMW, Bajakajian* and *State Farm*

It is critical this Court address these matters. To not consider these matters is to tell the courts of this country that judges can use whatever method they prefer, including filing restrictions, litigation injunctions and discretion, to prevent any consideration of pro se parties' issues. This is clearly discrimination against the class of people representing themselves.

This is not a matter where Armstrong continues to present issues that have been finally resolved on the merits in judgments entitled to preclusive effect. The Respondents will viciously attack Armstrong and "claim" that these issues have been addressed—but that is simply not true.

Constitutional, due process, notice and excessive penalty matters are to be addressed based on a *de novo* review. If there were any such reviews or decisions based on a ***de novo*** review there would be final judgments. There are no such orders. At best, the Respondents will rely on the Modified Judgment where the Fort Worth Court of Appeals did not address the constitutional issues at all. The Respondents will also rely on interlocutory orders in the Fraudulent Transfer Action that was voluntarily dismissed by Steppes based on F.R.C.P. 41(a) when Steppes dismissed the same claims in several cases resulting in a decision against Steppes with prejudice. Any interlocutory orders in a dismissed case are void and of no force and effect. *Winchester Homes, Inc. v. Osmose Wood Preserving, Inc., 37 F.3d 1053, 1058 (C.A.4 (Va.),1994)*; *Marques v. Fed. Reserve Bank, 286 F.3d 1014, 1018 (7th Cir.2002) Effect of nonsuit, dismissal, or discontinuance of action on previous orders*, 11 A.L.R.2d 1407, § 3, 6 The Respondents will also rely on the Confirmation Order that also does not address the constitutional issues and relies on the Modified Judgment where Armstrong was not a party and is specifically excluded from liability and on the interlocutory non-preclusive orders in the Fraudulent Transfer Action. There are no decisions on the merits on any of these issues. Armstrong suggests the Judges do not have jurisdiction or authority to blatantly deny anyone these constitutional rights. Discretion cannot be used as the excuse, or reason, to deny anyone the right to be heard.

One of the issues here is—what is the difference between acting in the absence of all jurisdiction in contrast to acting in excess of jurisdiction. Armstrong believes that it is time this Court addresses that question and provide standards. In reality, there is no difference between acting in the absence of jurisdiction versus

acting in excess of jurisdiction. The Bankruptcy Appellate Panel of the Tenth Circuit ("BAP") reversed two Judge Cornish orders where Judge Cornish acted without jurisdiction. In fact, in the BAP orders in cases 02-080 and 03-026 the BAP used the words acted without jurisdiction and acted in excess of jurisdiction interchangeably. These orders are proof that Judge Cornish acted without jurisdiction where judicial immunity does not apply. *In re Armstrong, 304 B.R. 432, 438 (10th Cir.BAP 2004)* and *In re Armstrong, 305 B.R. 381 (Table) (10th Cir.BAP (Utah),2004)*

DISCRETION: All issues and actions must be balanced. Everything shifts like pendulums including legal policies and decisions. The reasons for judicial immunity are well-documented. Armstrong argues that the pendulum has swung against the U.S. Constitution and individuals' due process rights and in favor of judges and attorneys. Just like any profession or action, power corrupts. Judges know there is absolutely no consequence for any of their actions so they can make up the law as they go or ignore the law as they please. Armstrong suggests judges do not have jurisdiction or authority to deny a party's constitutional right to access to the courts. Armstrong suggests that there must be some accountability for judges to prevent these violations of basic constitutional issues. It is up to this Court to provide guidance and accountability.

Judges rely on discretion. Armstrong's experience is that discretion is the courts' answer to all questions. Armstrong suggests that discretion is not an excuse, or reason, for judges, or anyone, to deny anyone else their constitutional right to be heard. Discretion is not an answer to ruling against a particular party regardless of the facts or the law. Discretion is not an excuse, or reason, to pick and choose how the rules are applied. Armstrong's experience in these cases is that

the rules ***always*** apply against Armstrong and in favor of Armstrong's adversaries but the rules never apply against Armstrong's adversaries and in favor of Armstrong. The rules must be applied equally. The immunity issue and protection allows judges to apply the law however they like including without jurisdiction.

FILING RESTRICTIONS: One subpart to this issue is whether unconstitutional filing restrictions and actions that effectively deny any party, including Armstrong, from appearing in court are actions taken without, or in excess of, jurisdiction. The courts in this horror have entered numerous filing restrictions allegedly providing that Armstrong can seek permission from the court to pursue Armstrong's claims. However, under the facts presented here, these courts almost never allow Armstrong to pursue his rights and claims regardless of the facts or the law and regardless of whether there has been any final order entitled to preclusive effect on that particular issue. Armstrong, and all parties representing themselves, is entitled to more than to be able to appear only occasionally and at the whim of judges.

STATE JUDGES VERSUS FEDERAL JUDGES: This Court has not addressed these questions in relation to federal judges. This Court has not overruled *Pulliam.* Numerous circuit courts acknowledge that this issue has yet to be decided in this Court. (App. B at 8a) Armstrong can see no basis to treat federal judges different from state judges. It is important for this Court to resolve these issues once and for all. Why would anyone, including judges, be immune from acts taken without, or in excess of, jurisdiction?

CONCLUSION

It is important for this Court to set standards and tests to guide lower courts in entering filing restrictions, if any; the scope of filing restrictions; what standard of review is appropriate to consider filing restrictions;

courts' burdens in findings to enter filing restrictions; and all other considerations. *Sindram I* Armstrong suggests these issues are legal and constitutional in nature and must be reviewed *de novo*. This includes that filing restrictions cannot be imposed solely on parties representing themselves and must be applied equally to all classes of citizens.

Armstrong suggests this Court include in its meaning of a full and fair opportunity to be heard before an **unbiased** and **impartial** tribunal *with the opportunity to a favorable ruling if warranted*.

It is important for this Court to address whether judicial immunity applies to federal judges for declaratory, prospective and/or injunctive relief. There is a need for this Court to define exactly where judges are not protected by the judicial immunity in relation to actions taken "in the absence of all" jurisdiction and/or "in excess of jurisdiction".

All parties are entitled to notice, due process, discovery and a full and fair opportunity to be heard regardless of their religion, age, sex, political associations, representing themselves in court, race, status, personal relationships etc. It is not so much the attorneys that abuse the legal system; it is the judges that allow them to abuse the legal system[3]. It is up to this

---

[3] Here is an example of how laws are applied unequally: Steppes and Feece argue that Armstrong is precluded from defending himself against Steppes and Feece using the Texas Modified Judgment against Armstrong, individually, even though Armstrong was not a party, and was never named, to the Texas Litigation. Steppes and Feece judicially admitted that Armstrong wasn't liable on the Texas Modified Judgment. At the same time, Steppes and Feece relitigate all the issues they did and could have litigated against the Trusts and Armstrong, relentlessly year after year, including the issues Steppes and Feece lost in the Texas Litigation. Steppes and Feece's position is apparently that preclusion principles only apply to prevent Armstrong, a non-party, from defending himself; that the part of the

Court to send a message to the courts all over the United States that the law is to be applied equally and that every person, regardless of any reason or class, including self-representation, is entitled to due process to its fullest extent including the constitutional right to access to the courts. It is clear discrimination for the courts to deny parties representing themselves the right to access to the courts.

Allowing this horror to continue unabated is a message to U.S. citizens that judges, legislators and attorneys are entirely above the law and, in fact, there really is no law for the average U.S. citizen especially representing themselves.

Even pro se parties are entitled to constitutional access to the courts without additional infringements and burdens. This Court has continually upheld due process rights and matters. It is necessary for this Court to once again apply the constitution strictly for all people. *Hamdi v. Rumsfeld, 124 S.Ct. 2633, 2648 (U.S.,2004)* (referring to numerous other Supreme Court decisions)

The Petition for Writ of Certiorari should be granted.

Respectfully submitted.

Donald E. Armstrong, pro se
PO Box 1059
Park City, UT 84060-1059
(435) 649-6477
September 20, 2004

Texas Modified Judgment that specifically excludes Armstrong, individually, has no effect; and that Steppes and Feece can continue to relitigate the same claims and issues forever. However, all of the Defendants and other courts allow Steppes and Feece to maintain these positions.

APPENDIX

TABLE OF CONTENTS FOR APPENDIX

APP. #	DESCRIPTION	PAGE #
A	Final Judgment in Case 2:02CV0500 entered on 12/23/02	1a
B	Memorandum Opinion and Order in Case 2:02CV500 entered on 12/23/02	3a
C	Order and Judgment in Case 03-4006 entered on 05/27/04	16a
D	Order Dismissing Amended Complaint, Close Case 2:02CV680 entered on 08/26/03	20a
E	Order and Judgment in Case 03-4222 entered on 05/27/04	29a
F	Order Dismissal re Failure on Fees, Enjoins DEA in Case 2:02CV1279 entered on 04/25/03	32a
G	Order and Judgment in Case 03-4120 entered on 05/27/04	34a
H	First Constitutional Amendment	41a
I	Order Granting in Part and Denying in Part Armstrong's Motion for Permission to File Motion to Modify Plan of Reorganization entered on 09/08/04	42a
J	List of Judge Recusals	45a
K	Number of Times Armstrong Has Sought Permission to File Pleadings	48a
L	Filing Restrictions Entered by Circuit Courts	50a
M	Judgment for Damages Resulting from Steppes Lis Pendens	54a

TABLE OF CONTENTS FOR APPENDIX

N	Excerpt from Case 00-26592 Confirmation Order	55a
O	Benson Order Denying filings re DeOnativia	56a

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED
Clerk, U.S. District Court
23Dec 02 PM 4:30
DISTRICT OF UTAH
By: DEPUTY CLERK

DONALD E. ARMSTRONG,
individually post-bankruptcy
petition and as post-bankruptcy
beneficiary of the
Donald E. Armstrong Family,

Case No: 2:02CV0500 Conway
Honorable John Edwards Conway
By Designation

Plaintiff,
vs.

THE HONORABLE JUDITH A. BOULDEN,
individually and
as an officer of the Court:
THE HONORABLE GLEN E. CLARK,
individually and as an officer of the Court;
THE HONORABLE TED STUART,
individually and as an officer of the Court;
THE HONORABLE JAMES A. PUSATERI,
individually and as an officer of the Court;
THE HONORABLE RICHARD BOHANON,
individually and as an officer of the Court;
and THE HONORABLE
TERENCE L. MICHAEL, individually
and as an officer of the Court,

Defendants.

FINAL JUDGMENT

Pursuant to Fed. R. Civ. P. 58 and having dismissed this action for failure to state a claim *(Doc. 33)* by a Memorandum Opinion and Order entered contemporaneously with this order of dismissal,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that a final order of dismissal is entered in favor of Defendants on Plaintiffs claims, which are dismissed with prejudice.

/s/
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED
Clerk, U.S. District Court
23Dec 02 PM 4:30
DISTRICT OF UTAH
By: DEPUTY CLERK

DONALD E. ARMSTRONG,
individually post-bankruptcy petition
and as post-bankruptcy beneficiary of the
Donald E. Armstrong Family,

Plaintiff,

Case No: 2:02CV 0500 Conway
Honorable John Edwards Conway
By Designation

vs.

THE HONORABLE JUDITH A. BOULDEN,
individually and as an officer of the Court;
THE HONORABLE GLEN E. CLARK,
individually and as an officer of the Court;
THE HONORABLE TED STUART,
individually and as an officer of the Court;
THE HONORABLE JAMES A. PUSATERI,
individually and as an officer of the Court;
THE HONORABLE RICHARD BOHANON,
individually and as an officer of the Court;
and THE HONORABLE TERRACE L.
MICHAEL, individually and as an officer
of the Court.

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendants' Motion to Dismiss and Motion for Sanctions, filed August 9, 2002 *(Doc, 15)*. The Court has reviewed the motion, memoranda, exhibits submitted by the parties, and the relevant authorities. For the reasons set forth below, the motion is granted in part and denied in part.

As a preliminary matter, Plaintiffs Opposition to Defendants' Motion for Summary Judgment and Request that the Court: 1) Stay the Defendants' Motion for Summary Judgment for a Period of Time Sufficient to Complete Discovery 2) Schedule Date for Joint Pretrial Reports 3) Pretrial Conference Held Telephonically ("Pl.'s Resp.") was filed September 11, 2002 *(Doc. 22)*. Defendants filed their Reply on September 23, 2002 *(Doc. 27)*. On November 26, 2002, more than two months after Defendants' Motion to Dismiss and Motion for Sanctions ("Def.'s Mot.") *(Doc.* 15) was fully briefed, Plaintiff filed a Motion to File Supplemental Brief in Opposition to the Defendants' Motion to Dismiss/Motion for Summary Judgment *(Doc. 32)*. The Court already granted Plaintiff an extension of time to file his Response. Therefore, the Court denies this motion to file an additional response.

I. Background

Plaintiff pro se Donald E. Armstrong, debtor in Chapter 11 bankruptcy action no. 00-26592 (D. Utah) ("bankruptcy case"), filed this complaint against United States District Judge Ted Stewart and United States Bankruptcy Judges Judith A. Boulden and Glen E. Clark of the District of Utah, James A. Pusateri of the District of Kansas, Richard Bohanon of the Western District of Oklahoma, and Terence L. Michael of the Northern

District of Oklahoma. In his Amended Complaint, Plaintiff alleges that each Defendant has denied him his constitutional rights.

With respect to Judge Boulden, Plaintiff claims, *inter alia,* that as the presiding judge in proceedings related to the bankruptcy case, she entered orders which affected him "without having all parties noticed or served." Plaintiff's Amended Complaint, filed June 19, 2002 at 4-5 *(Doc.* 5) ("Pl.'s Am. Compl."). Plaintiff further asserts that Judge Boulden denied him access to subpoenas and summonses and ordered United States Marshals to "follow and harass" him at the federal courthouse in Salt Lake City, Utah. *Id.* at 9.

Plaintiff alleges that Judge Clark, who entered a ruling on *a lis pendens* related to the bankruptcy case, also ordered Marshals to "follow and harass" him and prevented him from gaining access to subpoenas. *Id.* Further, Plaintiff claims, Judge Clark did not allow Plaintiff to obtain discovery or present evidence at a hearing and "continually ridiculed" him in court. *Id.* at 5,7,8.

Regarding Judge Stewart, Plaintiff's claims include his alleged failure to take timely action in a bankruptcy matter, entering a default judgment in another case instead of imposing a lesser sanction, and, like the other Defendants, "ref using] to do any review of the excessive penalties" in the Texas judgment. *Id* at 5, 9,11.

Sitting as Tenth Circuit Bankruptcy Appellate Panels ("BAP") in three cases involving Plaintiff, Judges Pusateri, Bohanon, and Michael allegedly "redesignated" Plaintiff's issues "down to one issue" in the first case, "redesignated" a notice of appeal into two notices in the second, and dismissed the third for failure to pay the filing fee before Plaintiff's time to pay had run. *Id* at 5-6, 12-13.

II. Standard of Review

The court may not dismiss a cause of action for

failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him to relief. *Hosp. Bldg. Co. v. Trs. of Rex Hasp., 425* U.S. *738, 746 (I 976); Mangels v. Pena, 789* F.2d *836, 837* (10th Cir. 1986). "All well-pleaded facts, as distinguished from conclusory allegations, must he taken as true." *Swanson v. Bixler, 750* F.2d 810, 813 (10th Cir. 1984). The court must view all reasonable inferences in favor of the plaintiff and the pleadings must be liberally construed. *Id.* The issue in reviewing the sufficiency of a complaint is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims. *Scheuer v. Rhodes,* 416 *U.S. 232, 236* (1974).[1]

Dismissal of *a pro se* complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend. *Haines v. Kerner,* 404 U.S. *519 (1972)* (per curiam). When a plaintiff proceeds *pro se,* the court will construe his pleadings liberally. Id at 520-21. However, "this does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Hall v. Bellmon, 935* F.2d 1106, 1110 (10th Cir. 1991). Moreover,

---

[1] The Court finds that this motion is properly characterized as a motion to dismiss. Plaintiff argues that by attaching two orders from related proceedings to their motion, Defendants have converted the motion to one seeking summary judgment. Therefore, Plaintiff argues, he should he allowed to engage in "extensive discovery." *Id.* However, where, as here, the parties do not disagree as to the identity of documents, but only as to their legal significance, the motion need not be considered one for summary judgment. *Papasan v. Allain, 478* U.S. 265, 268 n. I (1986). Further, insofar as Defendants move for dismissal based upon judicial immunity, such immunity from suit may be properly decided under Rule 12(6)(6), as it has been interpreted to include an entitlement to freedom from burdensome discovery where it applies. *See, e.g., Mullis v. U.S. Bankr. C t. for the Dist. of Nev* , 828 F.2d 1385 (9th Cir. 1987)

the court is not to assume the role of advocate for the *pro* se litigant. *Id.*

III. Discussion

A. Equitable Relief

Plaintiff's first claim is for injunctive relief. Specifically, Plaintiff seeks "a temporary restraining order, preliminary injunction and permanent injunction against the Defendants, in their individual capacities and as officers of the Court," forbidding the Defendant judges from further denying him his constitutional rights as he perceives them. Pl.'s Am. Compl. at 20-21. However, where an alternate remedy exists at law, equitable relief is not available. *Switzer v. Coan,* 261 F.3d *985,* 991 (10th Cir. 2001). Furthermore, even where no adequate remedy at law exists, restraining orders and injunctions are extraordinary remedies and the moving party bears the burden of demonstrating that they are entitled to such relief *Granny Goose Foods, Inc. v. Teamsters,* 415 U.S. 423, 442 (1974); *Potawatami Tribe v. Enter. Mgmt. Consuls.,* 883 F.2d 886, 888-89 (10th Cir. 1989). To meet this burden, the moving party must establish that: (1) he will suffer irreparable injury unless an injunction issues; (2) the threatened injury to the moving party outweighs any harm the non-moving party may suffer as a result; (3) an injunction would not be adverse to the public interest: and (4) there is a substantial likelihood of the movant's success on the merits. *State of Utah v. Babbitt,* 137 F.3d 1193, 1200 n.7 (10th Cir. 1998) (citing *Elam Constr., Inc. v. Reg'l Transp. Dist.,* 129 F.3d 1343, 1 346-47 (10th Cir. 1997)). Mere threatened, speculative harm, without more, does not amount to irreparable injury for purposes of justifying injunctive relief *See, e.g., Mullis* 828 F.2d at 1385.

Here, Plaintiff's remedy at law regarding the BAP's rulings was to file a timely appeal of such rulings in the Tenth Circuit Court of Appeals. Moreover, Plaintiff does not meet the necessary elements for an injunction on any of his claims. Plaintiff's complaint alleges no irreparable

injury of any kind--it merely asks the Court to enjoin these judges from ruling against him in the future. Nor does Plaintiff's complaint contain a valid assertion of irreparable harm for the Court to balance against the obvious potential harm to the Defendant judges if they were enjoined from making rulings with which Plaintiff presumes he will disagree. While an unfavorable decision might create legitimate grounds for appeal-- a remedy at law-- adverse rulings alone cannot provide fertile ground for parties to seek injunctions against the issuing judges.

Furthermore, the likelihood of Plaintiff's success on the merits in this case is minimal, due, in part, to the fact that the Defendant judges are arguably immune from suit for prospective injunctive relief. While the Tenth Circuit has yet to directly confront the issue, the Sixth, Ninth and Eleventh Circuits have held that federal judges enjoy absolute immunity from equitable relief in *Bivens* actions. *Newsome v. Mertz,* 17 Fed. Appx. 343, 345 (6th Cir. 2001) ("[F]ederal judges are immune from *Bivens suits* for equitable relief"); *Bolin v. Story,* 225 F.3d 1234 (11th Cir. 2000) ("We also conclude that the defendant judges are entitled to absolute immunity."); *Mullis,* 828 F.2d at 1391-94 (9th Cir. 1987) (holding that federal judges are immune from suit for equitable relief. The court reasoned that, unlike the case in a § 1983 claim, such immunity in a *Bivens* action entails no "impingement on a remedy Congress provided," for *Bivens is* judge-made and implied directly from the Constitution. Further, "a federal court is subject to appeals and extraordinary writs that a state court is not." For these and other reasons, the court found "no need to carve out an exception to judicial immunity to permit declaratory and injunctive relief *against federal* judicial officers."). *See also Scherer v. Flannigan,* 2002 U.S. Dist. LEXIS 18578 (D. Kan. 2002); *Mehdipour v. Purcell,* 173 F.Supp. 2d 1 165 (W.D. Okla.) 2001. *But cf. Scruggs v. Moellering,* 870 F.2d 376, 378 (7th Cir. 1989)

(finding the analysis in *Mullis* to be of "doubtful merit," but not deciding the issue). This Court finds that while Plaintiffs claim for injunctive relief is without merit based upon well settled principles of law, absolute judicial immunity from suit is another ground upon which this claim may properly be dismissed.

In sum, Plaintiff's first claim, with all well-pleaded facts taken as true and all formalities set aside for the *pro se* litigant, does little more than criticize and disagree with judicial decisions made by each Defendant. Plaintiff has no claim for injunctive relief against the Defendant Judges, for he demonstrates no inadequate remedy at law or serious risk of irreparable harm and, on balance, the potential harm to Defendants and the public at large is great. In addition, this court agrees with the several circuits finding that federal judges enjoy absolute immunity from suit for equitable relief in *Bivens* actions. On its face, therefore, Plaintiffs Amended Complaint states no legal claim for injunctive relief and this defect cannot be cured by amendment.

B. Monetary Damages

Plaintiff's Second Claim for Relief requests damages, punitive damages, attorney's fees and costs from all Defendants for their alleged violations of Plaintiffs civil rights. Pl.'s Am. Compl. at 21-22. It is well settled, however, that federal judges, including bankruptcy judges, are immune from suit for damages where the challenged acts were 1) judicial in nature, and 2) were not done in the absence of all jurisdiction. *Mireles v. Waco.* 502 U.S. 9, 11 (1991); *VanSickle v. Halloway,* 791 F.2d 1431, 1435 (10th Cir. 1986). The public policy underlying judicial immunity is so strong, in fact, that immunity can apply even where challenged judicial acts are "erroneous, malicious, or in excess of their judicial authority." *Id.* at 1435. The purpose of absolute judicial immunity from suit for damages is to insure that judges

can carry out their duties and functions independently, without the fear of harassment by dissatisfied litigants. *Id* at 1434-5 (citing *Stump v. Sparkman,* 435 U.S. 349, 356-57 (1978)). "[I]t is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself" *Bradley v. Fisher, 80* U.S. 335, 347 (1872).

The liberal construction of pleadings afforded *pro se* litigants will not defeat absolute judicial immunity where a complaint clearly centers on judicial rulings. *Gregory v. US. Bankr. Ct. for the Dist. of Colo.,* 943 F.2d 1498, 1499-1500 (10th Cir. 1991) (affirming the dismissal of an action against bankruptcy and district judges by *pro se* debtor dissatisfied with their rulings). In this case, Plaintiff repeatedly asserts that Defendants made rulings in the absence of all jurisdiction. Pl.'s Resp. at 5, 12-14. However, notwithstanding Plaintiff's numerous and lengthy filings, the Court finds no legal basis for such assertions. A clear absence of all jurisdiction means a clear absence of all subject matter jurisdiction. *Bradley,* 80 U.S. at 352. An illustrative example of such absence is "if a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability...." *Stump,* 435 U.S. at 357 n.7. By contrast, "if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune." *Id.* In this case, all of the actions Plaintiff complains of relate unequivocally to proper judicial functions or judicial rulings with which Plaintiff disagrees, but which were made by judges presiding over matters properly within the jurisdiction of their respective courts. Absent any evidence that the Defendant judges acted without subject matter jurisdiction

in this case, the Court finds that Plaintiff's claim for damages alleges no judicial conduct outside the doctrine of absolute judicial immunity. Hence, Plaintiff has failed to state a legal claim for damages.

C. **Sanctions**

i. Filing Restrictions

Based upon the allegedly frivolous, vexatious, and repetitive nature of Plaintiffs filings to date, Defendants urge this Court to impose litigation sanctions on future *pro se* filings by Plaintiff. Where a party has "engaged in a pattern of litigation activity which is manifestly abusive," it may be appropriate to impose such restrictions on future filings. *Johnson v. Cowley, 872* F.2d 342, 344 (10th Cir. 1989). "The right of access to the courts is neither absolute nor unconditional and there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious." *Tripati v. Beaman, 878 F.2d* 351, 353 (10th Cir. 1989) (citing *In re Green, 669 F.2d* 779, 785; *Phillips v. Carey,* 638 F.2d 207, 208 (10th Cir. 1981)). When claims arising from a particular event are repeatedly raised by *a pro se* litigant in related proceedings or other litigation, filing restrictions may be imposed to curb such abuse of the judicial system. *DePinda v. Hemphill,* 34 F.3d 946 (10th Cir. 1994). Nonetheless, imposition of filing restrictions is a harsh sanction and "litigiousness alone is not a sufficient reason to restrict access to the court." *Winslow v. Hunter,* 17 F.3d 314, 316 (10th Cir. 1994) (citing *Tripati,* 878 F.2d at 353).

In *Tripati,* the Circuit Court held that a district court may place restrictions on litigants with a history of abusive or frivolous filings, but before doing so it must set forth the litigant's history of such abusive or frivolous filing activities. *Id.* Additionally, the court must give "some guidelines as to what plaintiff must do to obtain the court's permission to file an action." *Id.* at 354. Finally, the court must give the litigant notice of the

proposed restrictions and an opportunity to respond. *Id.*

In support of filing restrictions in this case, Defendants rely in part on *Winslow,* in which the court imposed such restrictions on a group of *pro se* litigants who had challenged bankruptcy courts' orders in seventeen matters over a ten-year period. *Winslow,* 17 F.3d 314. The court enjoined future filing by the plaintiffs unless they were either represented by licensed counsel or received permission from the Court to proceed *pro se. Id. Accord, Cauthon v. Rogers,* 116 F.3d 1334 (10th Cir. 1997) (finding *a pro se* petitioner, who did not prevail in any of approximately twenty appeals and original proceedings that he filed in the circuit court, committed wasteful abuse of judicial resources warranting filing restrictions); *Werner v. State of Utah,* 32 F.3d 1446 (10th Cir. 1994) (finding *a pro se* petitioner who had filed more than fifty cases in district court in seven years, most of which were without merit, to be an abusive litigant. The Tenth Circuit upheld the district court's imposition of filing restrictions and, *sua sponte,* imposed similar filing restrictions on petitioner in the appellate court.).

The question here is whether Plaintiff's conduct rises to the level of a "lengthy history of vexatious, abusive actions" sufficient to justify this Court imposing restrictions on any future *pro* se filings. As summarized by Judge Boulden, on January 17, 2002, Plaintiff had "appeared in one capacity or another before twelve judges in Utah, and more than ten judges in Texas," primarily attempting to relitigate the same issues, all arising from the original bankruptcy proceeding. *In re Donald Erwin Armstrong,* No. 00-26592-JAB, Order at 27 (Bankr. D. Utah 2002).[2] On May 22, 2002 Plaintiff

---

[2] On January 3, 2002, Judge Boulden approved a reorganization plan and issued a litigation injunction against Plaintiff, enjoining him from initiating or continuing any further litigation against creditors or other

initiated the present action against Judges Boulden, Clark, and Stewart *(Doc. 1)*. In his Amended Complaint, filed June 19, 2002 *(Doc.* 5), Plaintiff added Judges Pusateri, Bohanon, and Michael as Defendants.

In light of the relevant case law, the Court finds that Plaintiffs filing history shows the beginning of precisely the type of litigious pattern and abuse of the judicial process that warrants filing sanctions under *Werner.* If such pattern continues, the Court will exercise its inherent power pursuant to 28 U.S.C. § 1651, to enter orders "necessary and appropriate" in aid of its jurisdiction, by imposing reasonable filing restrictions upon Plaintiff, for where a party has "engaged in a pattern of litigation activity which is manifestly abusive," filing restrictions are appropriate. *Johnson,* 872 F.2d at 344. Specifically, if Plaintiff Armstrong continues to make frivolous, meritless claims in this Court, it will enjoin him from filing any future proceedings *pro se* without first complying with the following restrictions: (1) Plaintiff will be required to submit a petition requesting leave to file; (2) Plaintiff will also be required to provide a complete list of any and all pending matters and the status of each; (3) Plaintiff will provide a notarized affidavit identifying all issues he wishes to raise and certifying that they are not frivolous, duplicative, or made in had faith; and (4) the Chief Judge for the District of Utah, Central Division, will have to approve the *pro se* filing in advance. The Court hereby warns Plaintiff Armstrong that further filing of frivolous claims in this Court may result in sanctions, including but not limited to, those listed above. The Court notes that

---

interested parties or their attorneys without prior, express approval from the court. Judge Boulden noted that "[i]f Armstrong disagreed with a ruling, he simply railed the same or similar actions in a different court." *Id* at 26. J. Boulden's Findings of Fact, Concl. of Law, and Order, filed January 31, 2002, incorporates by reference her January 17, 2002 Order.

imposition of such filing restrictions would be in furtherance of judicial efficiency and economy, not as a punitive measure.

ii. Attorney Fees and Costs

The Court acknowledges Defendants' request "that attorney fees he awarded in their favor in a reasonable amount." Defs.' Mot. at 11. However, Defendants have provided the Court no legal basis upon which to consider such request. The Court will consider this issue upon proper briefing and submission of information.

IV. Conclusion

In sum, the Court finds that Plaintiff's Amended Complaint fails to state a legal claim for equitable relief or damages and its defects could not be cured by further amendment. Thus, insofar as Defendants' motion seeks dismissal of this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, it is granted. The Court further finds that Defendants' request for imposition of litigation sanctions in the form of filing restrictions is denied at this time, but cautions Plaintiff that continued filing of frivolous, vexatious suits in this Court may result in imposition of such sanctions. Finally, the Court denies Defendants' request for reasonable attorney fees at this time.

Wherefore,

IT IS ORDERED that Defendants' Motion to Dismiss and Motion for Sanctions, filed August 9, 2002 *(Doc. 15),* is granted in part and denied in part as follows:

(1) This case is dismissed with prejudice for failure to state a claim;

(2) No sanctions are imposed upon Plaintiff at this time; and

(2) Attorney's fees are not awarded to Defendants at this time.

IT IS ORDERED that Plaintiffs Motion to File Supplemental Brief in Opposition to the Defendant's Motion to Dismiss/Motion for Summary Judgment *(Doc.*

32) is denied.

/s/
SENIOR UNITED STATES JUDGE
Sitting by designation from the District
of New Mexico

Plaintiff *Pro* Se:
Donald E. Armstrong
Park City, Utah

Counsel for Defendants:
Stephen J. Sorenson
Assistant United States Attorney
Salt Lake City, Utah

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
FILED
United States Court of Appeals
Tenth Circuit
MAY 27, 2004
PATRICK FISHER
Clerk

DONALD E. ARMSTRONG, individually post-bankruptcy petition and as post-bankruptcy petition beneficiary of the Donald E. Armstrong Family Trust and the Donald E. Armstrong Charitable Remainder Unitrust,
Plaintiff-Appellant,

v.

THE HONORABLE JUDITH A. BOULDEN, individually and as an officer of the Court; THE HONORABLE GLEN E. CLARK, individually and as an officer of the Court; THE HONORABLE TED STEWART, individually and as an officer of the Court; THE HONORABLE JAMES A. PUSATERI, individually and as an officer of the Court; THE HONORABLE RICHARD

No. 03-4006
(D.C. No. 2:02-CV-500-JC)
(D. Utah)

BOHANON, individually and as an officer of the Court; THE HONORABLE TERRENCE L. MICHAEL, individually and as an officer of the Court,

Defendants-Appellees.

ORDER AND JUDGMENT*

Before **McCONNELL, ANDERSON,** and **BALDOCK,** Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff-appellant Donald E. Armstrong appeals the judgment of the district court dismissing this case with prejudice for failure to state a claim under Fed. R. Civ. P. 12(b)(6). We affirm.

Armstrong filed this action against United States District Judge Ted Stewart and United States Bankruptcy Judges Judith A. Boulden and Glen E. Clark of the District of Utah. He also sued three other bankruptcy judges who had comprised a panel of the Bankruptcy Appellate Panel (BAP) of the Tenth Circuit that had ruled against him. According to Armstrong's opening brief, however, he has withdrawn his appeal as it relates to those three BAP judges. Aplt. Br. at 2.

In his complaint requesting both injunctive

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

relief and damages, Armstrong complained about the manner in which Judge Boulden presided over his bankruptcy case and about the manner in which Judge Clark conducted a related bankruptcy proceeding. He also took issue with the entry of a default judgment against him by Judge Stewart, the Judge's refusal to review a Texas judgment, and various other judicial actions.

As for Armstrong's request for injunctive relief, the district court concluded that Armstrong failed to meet the stringent standard required before injunctive relief will issue. Specifically, Armstrong failed to establish that (1) he would suffer irreparable injury without the injunctions; (2) that the threatened injury to him outweighed any harm that the defendants would suffer if the injunctions should issue; (3) that the injunctions would not be contrary to the public interest; and (4) that there is a substantial likelihood that he would succeed on the merits of his legal challenge to the actions of defendants. *See Utah v. Babbitt,* 137 F.3d 1193, 1200 n.7 (10th Cir. 1998). The district court further concluded that Armstrong had an adequate remedy at law for his alleged injuries, thus precluding injunctive relief. We agree with this analysis by the district court and affirm on that basis.[1]

---

[1] Alternatively, the district court also reasoned that Armstrong was unlikely to succeed on the merits because absolute judicial immunity arguably protects these federal-judge defendants from suit for equitable relief in *Bivens* actions. Mem. Op. & Order filed Dec. 23, 2002, at 5-6. As we did *in Switzer v. Coan,* 261 F.3d 985, 990 n.9 (10th Cir. 2001), we express no opinion on this issue and rely for affirmance on Armstrong's failure to satisfy all of the other requirements needed to justify the grant of equitable relief.

As for Armstrong's prayer for monetary damages, it is clear that all of the judges here are absolutely immune from a suit for damages because they were acting in their judicial capacities. All of the actions complained of were judicial in nature and were not done in the absence of all jurisdiction. *See Mireles v. Waco,* 502 U.S. 9, 11-12 (1991). Armstrong's protestations and conclusory allegations to the contrary do not change the fact that the acts of these defendants were done under the auspices of either their bankruptcy-court or their district-court jurisdiction. That the BAP has recently determined the Utah bankruptcy court to have lacked the jurisdiction to enter criminal contempt sanctions against Armstrong in a related matter has no bearing on the jurisdiction exercised by these defendants in the matters complained of.

Armstrong's motion to file a supplemental appendix is GRANTED. Armstrong's motion for leave to proceed on appeal without prepayment of costs or fees is DENIED, and Armstrong is directed to make immediate payment of the balance of his appellate filing fee. The judgment of the district court is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

Bobby R. Baldock,
Circuit Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

FILED
Clerk, U.S. District Court
27Aug 27 PM 2:10
DISTRICT OF UTAH
By: DEPUTY CLERK

DONALD E. ARMSTRONG, individually post-bankruptcy petition and as post-bankruptcy petition beneficiary of the Donald E. Armstrong Family Trust and the Donald E. Armstrong Charitable Remainder Unitrust,

Plaintiff,

vs.

THE HONORABLE TOM R. CORNISH, individually and as an officer of the Court, and the UNITED STATES OF AMERICA,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND MOTION FOR SANCTIONS

USDC #: 2:02 CV 680 DB

District Court Judge Dee Benson

Defendants' Motion to Dismiss and Motion for Sanctions are currently before the Court. The Court has

reviewed the motions,[1] memoranda[2] and relevant legal authorities. For the reasons set forth in this s order, Defendants' motions are GRANTED.

BACKGROUND

Plaintiff Donald E. Armstrong, debtor in Chapter 11 bankruptcy case number 00-26592 (D. Utah), filed this pro se complaint against United States Bankruptcy Judge Tom R. Cornish, of the Eastern District of Oklahoma, alleging a denial of his civil rights by Judge Cornish's judicial rulings in the bankruptcy case. Judge Cornish was assigned to Plaintiff's bankruptcy case in July 2002 when Judge Boulden recused herself because Plaintiff sued her, and several other judges, over judicial ruling; with which he disagreed.[3] The complaint filed in this case regarding Judge Comish[4] is similar o[f] the complaint in Armstrong's prior case against Judge Boulden. The complaint alleges that, in just one and one halt days of hearings, Judge Cornish denied Plaintiff access to subpoenas and summonses, denied him the right to be heard, and denied him the right to obtain and present discovery.[5]

---

[1] Defendants' motion to dismiss, docket entry 8-1; Defendants' motion for sanctions, docket entry 8-2; Defendants' motion to dismiss amended complaint, docket entry 27-1.

[2] Defendants' memorandum in support, docket entry 9-1; Plaintiff's memorandum in opposition, docket entry 21-1; Defendants' reply memorandum, docket entry 23-1; Plaintiff's memorandum in opposition to dismiss amended complaint, docket entry 31-1; Defendants' reply to opposition to dismiss amended complaint, docket entry 32-1.

[3] See Armstrong v. Boulden, case no. 2:02 CV 0500 (D. Utah).

[4] The complaint filed in this case is largely duplicative of the complaint filed in the Boulden case, which has been resolved as to all the defendants named in that case. See id., Memorandum Decision and Order, filed December 23, 2002. Therefore, in the present case, the Court will only address the allegations pertaining to Judge Cornish, and ignores allegations against non-parties.

[5] Plaintiffs Complaint, filed July 15, 2002 at 6-7, docket entry 1-1; Plaintiff's Amended Complaint, filed October 3, 2002 at 6-7, docket

ANALYSIS

As a prelim nary matter, Plaintiff argues that Defendants have converted their motion to a summary judgment motion by attaching two orders from related proceedings. Plaintiff therefore asserts that he should be allowed to conduct discovery. However, a motion to dismiss is not automatically converted into motion for summary judgment simply because a party submits additional material; in support of the motion.[6] "Some materials that are part of the public record or do not contradict the complaint may be considered by a court in deciding a Rule 12(b)(6) motions to dismiss."[7] Furthermore, Defendants have asserted judicial immunity as a basis for dismissal, and immunity from suit, including the burdens of litigation and discovery, may be decided under Rule 12(b)(6).[8] Accordingly, the Court finds that Defendants' motion is appropriately treated as a motion to dismiss.

Equitable Relief

Plaintiff seeks equitable relief in the form of a temporary restraining order, preliminary injunction and permanent injunction against the Defendants to prevent them from further denying his constitutional rights, as interpreted by him. It is well settled "that equitable relief is available only in the absence of adequate remedies at law."[9] Moreover, restraining orders and injunctions are extraordinary remedies and the moving party bears the

---

entry 22-1. These identical allegations were raised in the Boulden case.

[6] See State v Coeur d'Alene Tribe, 164 F.3d 1102, 1107 (8th Cir 1999)

[7] Id. (citing Papasan v. Allain, 478 U.S. 265, 268 n.1 (1986))

[8] See Mullis v. United States Bankr. Ct. for the Dist. of Nev., 828 F.2d 1385, 1387 n.6 (9th Cir. 1987)

[9] Switzer v. Coan, 261 F.3d 985, 991 (10th Cir. 2001); see also Floyd v. IRS, 151 F.3d 1295, 1300 (10th Cir.1998); United States v. Madden, 95 F.3d 38, 39 (10th Cir.1996); Winfield Assocs., Inc. v. Stonecipher, 429 F.2d 1087, 1090-91 (10th Cir.1970).

burden of demonstrating that they are entitled to such relief.[10] To meet this burden, the moving party must establish: (1) irreparable injury unless an injunction issues; (2) the threatened injury outweighs the damage the other party may incur; (3) an injunction would not be adverse to the public interest; and (4) a substantial likelihood of success on the merits.[11] "Mere threatened, speculative harm, without more, does not amount to irreparable injury for purposes of justifying preliminary injunctive relief."[12]

In this case, equitable relief is not available because Plaintiff had an adequate remedy at law through the appellate process. The legal means to obtain review and relief of an adverse decision is through an appeal from the bankruptcy court to the bankruptcy appellate panel or the district court, folio wed by a further appeal to the Tenth Circuit Court of Appeals. These proceedings provide e a legal remedy sufficient to preclude the subsequent pursuit of collateral equitable relief.[13] Accordingly, Armstrong cannot pursue collateral relief when direct appeal was ignored.[14]

Further, Plaintiff fails to allege any irreparable injury to demonstrate that he is entitled to injunctive

---

[10] Switzer v. Coan, 261 F.3d 985, 991 (10th Cir. 2001); see also Floyd v. IRS, 151 F.3d 1295, 1300 (10th Cir.1998); United States v. Madden, 95 F.3d 38, 39 (10th Cir.1996); Winfield Assocs., Inc. v. Stonecipher, 429 F.2d 1087, 1090-91 (10th Cir.1970).

[11] Utah v. Babbit, 137 F.3d 1193, 1200 n.7 (10th Cir. 1998) (citing Elam Constr., Inc. v. Reg'l Transp. Dist , 129 F.3d 1343, 1346-47 (10th Cir. 1997)).

[12] Chem. Weapons Working Group, Inc. v United States Dept. of the Army, 935 F. Supp. 1206, 1215 (D. Utah 1996) (citing Mullis, 828 F.2d 1385).

[13] See Switzer, 261 F.3d at 991; Bolin v. Story, 225 F.3d 1234, 1242-43 (11th Cir. 2000).

[14] See id.

relief. Consequently, Plaintiffs claims for equitable relief fail because he cannot show an inadequate remedy at law and a serious risk of irreparable harm, which are essential prerequisites to injunctive relief.

Monetary Damages

Plaintiff's second claim for relief seeks damages, punitive damages, attorney fees and costs for Defendants' alleged violations of Plaintiffs civil rights. However, if the challenged acts are judicial in nature and were not done in the absence of all jurisdiction, federal judges, including bankruptcy judges, are immune from suit for damages.[15] It makes no difference in how the judge's actions are characterized in the pleadings, judicial immunity will apply as long the alleged wrongful acts are judicial in nature and were not done in the absence of all jurisdiction.[16]

In this case, all of the complaints Plaintiff raises regarding Judge Cornish are based solely on judicial acts and rulings made by Judge Cornish in the cases assigned to him within his regular jurisdiction. The acts complained of included: refusing to review or reconsider judgments; refusing to vacate previously entered orders; refusing to vacate orders entered by other judges; ruling on motions; setting limits for testimony; setting deadlines for motions and trial; and entering decisions and orders. All of these acts are strictly judicial in nature, and are functions regularly performed by judges. Plaintiff does not claim that he had any dealings with Judge Cornish outside of his official judicial capacity. Further, Plaintiff fails to provide any evidence of judicial conduct outside the doctrine of absolute judicial immunity. Consequently,

---

[15] Mireles v. Waco, 502 U.S. 9, 11 (1991); VanSickle v. Holloway, 791 F.2d 1431, 1435 (10th Cir. 1986)

[16] Mireles, 502 U.S. at 11; Lundahl v. Zimmer, 296 F.3d 936, 939 (10th Cir. 2002) (citing Stump v. Sparkman, 435 U.S. 349, 356-57 (1978)).

Plaintiff has failed to state a legal claim for damages.

Declaratory Judgment

Plaintiff's third claim is styled as a request for declaratory judgment. However, what Plaintiff actually requests is for this Court to set aside or overturn several bankruptcy court decisions made by various judges. Such collateral attack on the judgments, orders, or decisions of federal courts is improper.[17] Once again, Plaintiffs remedy for review of these decisions is through the appellate process.

Unconstitutional Taking

Plaintiff's final claim asserts that "Defendants have essentially 'taken' [his] property without just compensation,"[18] because "Defendants have 'taken' [his] post-bankruptcy petition causes of action against Steppes and others."[19] Plaintiff bases these allegations, unsupported by any relevant legal authority, on a portion of the Fifth Amendment, which states: "private property [shall not] be taken for public use without just compensation."[20] Plaintiff argues that Defendants have "taken" his cause of action because Judge Cornish did not enter rulings to overturn orders previously entered by other judges. However, Plaintiff fails to describe any facts to show how his cause of action constituted "property" which was "taken."

"A cause of action is property of a substantially different nature than real or personal property or vested intangible rights. It is inchoate and affords no definite or enforceable property right until reduced to final judgment."[21] Furthermore, "[a] cause of action does not

---

[17] See In re Andersen, 179 F.3d 1253, 1258-59 (10th Cir. 1999); Mullis, 828 F.2d at 1392-93.

[18] Plaintiff's memorandum at 19; docket entry 21-1.

[19] Id.

[20] U.S. Const. amend. V.

[21] In re Consol. United States Atmospheric Testing Litig., 820 F.2d

afford the holder the traditional bundle of rights associated with the ownership of property. Instead, it represents a right to assert a claim for compensation or some other form of judicial relief. Its value is contingent on successful prosecution to judgment."[22] In this case, Plaintiffs cause of action does not constitute "property," and therefore he cannot claim his "private property" has been "taken for public use." Consequently, Plaintiff does not have a takings claim.

Claims Against the United States

Although Plaintiff has named the United States as a defendant in this action, he has failed to make any separate allegations in support of governmental liability. Furthermore, the United States is immune from suit unless it consents to be sued.[23] Consent is only given when Congress "unequivocally expresses in statutory text its intention to waive the United States' sovereign immunity."[24] The United States has not waived its sovereign immunity for constitutional torts,[25] and it will not be liable as a party under constitutional provisions[26] or under civil rights statutes.[27] Because Plaintiff has failed to make specific allegations of government liability, and because the United States has sovereign

---

982, 989 (9th Cir. 1987), cert. denied, Konizeski v. Livermore Labs, 485 U.S. 905, I08 S. Ct. 1076 (1988).

[22]Id.

[23]See United States Dept. of Energy v. Ohio, 503 U.S. 607, 614 (1992).

[24] Fent v.0 (la. Water Res. Bd., 235 F.3d 553, 556 (10th Cir. 2000).

[25]See Martinez v. Winner, 771 F.2d 424, 442 (10th Cir. 1985).

[26]See Bivens v Six Unknown Named Agents, 403 U.S. 388, 410 (197I) (Harlan, J., concurring) ("However desirable a direct remedy against the government might be as a substitute for individual official liability, the sovereign still remains immune to suit.").

[27]See e.g., Ivey v. United States, 873 F. Supp. 663, 669-70 (N.D.Ga. I995) (stating none of civil rights acts waive sovereign immunity of the United States in suit for monetary damages).

immunity, Plaintiff's claims against the United States fail.

SANCTIONS

Defendants request that the Court impose sanctions, in the form of filing restrictions, on future pro se filings by Plaintiff. Defendants argue that filing restrictions are appropriate in this instance in light of Plaintiff's lengthy history of vexatious and abusive litigation. This Court has previously noted Plaintiffs "disposition for filing numerous actions in District Court involving proceedings in Bankruptcy Court,"[28] and agrees that filing restrictions are now appropriate. A previously issued standing Order, filed in April 2003, currently enjoins Plaintiff "from filing any motions, including new actions, in District Court that relate to proceedings in Bankruptcy Court."[29] That previously issued Order is reaffirmed by this decision, and all future filings by Plaintiff shall be lodged by the Clerk of the Court. Plaintiff may obtain relief from this Order with any filing by first demonstrating to the Chief Judge of the Court that the filing is made in good faith and not malicious or without arguable merit.

CONCLUSION AND ORDER

The Court finds that Plaintiffs Amended Complaint fails to state a valid legal claim for equitable relief or damages against any named defendant. These defects cannot be cured by additional amendments.

Accordingly, IT IS HEREBY ORDERED that Defendants' Motion to Dismiss and Motion for Sanctions is GRANTED, and this case is DISMISSED WITH PREJUDICE for

IT IS FURTHER ORDERED that all other pending motions[30] are rendered moot by this Order and

---

[28] Armstrong v. Cornish, case number 2:02-CV-1279B, Order at 2, filed April 28, 2003, docket entry 5-3.

[29] Id.

[30] Plaintiff's motion for a temporary restraining order, docket entry

DISMISSED, and this case is CLOSED.

DATED this 26th day of August, 2003.

BY THE COURT:

Dee Benson
United States District Judge

6-1; Plaintiffs motion for hearing/status conference, docket entry 6-2; Plaintiffs motion for reconsideration of recusal, docket entry 6-3; Plaintiffs motion regarding notice of Judge Cornish order, docket entry 11-1; Plaintiffs motion to consider recusal, docket entry 11-2; Plaintiffs motion to consider additional motion, docket entry 20-1; Plaintiffs motion for scheduling order, docket entry 21-2; Defendant's motion to strike, docket entry 24-1; Plaintiffs motion to extend time, docket entry 29-1; Plaintiffs motion for hearing/status conference, docket entry 29-2.

APPENDIX E
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit
MAY 27, 2004
PATRICK FISHER
Clerk

DONALD E. ARMSTRONG,
Plaintiff-Appellant,

v.

THE HONORABLE TOM R. CORNISH, individually and as an officer of the court; UNITED STATES OF AMERICA,
Defendants-Appellees.

No. 03-4222
(D.C. No. 2:02-CV-680-DB)
(D. Utah)

ORDER AND JUDGMENT*

---

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before **McCONNELL, ANDERSON**, and **BALDOCK,** Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff-appellant Donald E. Armstrong appeals from the order of the district court granting defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and imposing sanctions, and dismissing the case with prejudice. Armstrong raises the following issues:

1. What are the exceptions to judicial immunity?
2. Did Armstrong assert facts that "could" warrant relief?
3. Did the courts have jurisdiction of the underlying cases in light of the *Rooker-Feldman* and *Younger* doctrines?
4. Did the judges have jurisdiction?
5. Are the injunctions void for lack of jurisdiction?
6. Should the case be referred to a different judge?

We review de novo the district court's dismissal under Rule 12(b)(6). *Sutton v. Utah State Sch. for the Deaf & Blind,* 173 F.3d 1226, 1236 (10th Cir 1999). The court's imposition of filing restrictions is reviewed for abuse of discretion. *Tripati v. Beaman, 878* F.2d 351, 354 (10th Cir. 1989).

Having reviewed the briefs, the record, and the applicable law pursuant to the above-mentioned standards, we determine that there was no error in the

dismissal of this case. With regard to the filing restrictions, our review shows that the restrictions imposed by the district court "are clearly the type of carefully tailored restrictions contemplated by the various courts that have addressed the question of restraints on abusive litigants." Id. at 353. In addition, Armstrong had adequate notice of defendants' request for filing restrictions and argued against the sanctions in his brief opposing the motion. See R. Vol. IV, doc. 31 at 19.

We therefore conclude that the filing restrictions imposed were appropriate and that their imposition was not an abuse of discretion. "[The right of access to the courts is neither absolute nor unconditional, and there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious." Tripati, 878 F.2d at 353 (citations omitted).

Armstrong's motion for leave to file appendix, motion to file supplemental appendix, motion to file reply to appellees' surreply, and motion to file second supplemental appendix are DENIED. The order of the district court is affirmed for substantially the same reasons stated by that court in its order filed August 27, 2003. The mandate shall issue forthwith.

Entered for the Court

Bobby R. Baldock,
Circuit Judge

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH – CENTRAL DIVISION

FILED
Clerk, U.S. District Court
23Dec 02 PM 4:30
DISTRICT OF UTAH
By: DEPUTY CLERK

DONALD E. ARMSTRONG, Petitioner, vs. THE HONORABLE TOM R. CORNISH, Respondent.	**ORDER** Case No. 2:02-CV-1279B Bankruptcy Case No. 00-26592

This matter is before the court on petitioner Donald E. Armstrong's petition for Writ of Mandamus. Armstrong is a debtor in a pending Chapter 1 1 bankruptcy case in this district, case no. 00-26592 ("Bankruptcy Case"). Armstrong requests this court (1) to certify a Motion for Withdrawal of Reference in the related Bankruptcy Case; (2) to stay all proceedings in this case and in all related cases until the resolution of petitioner's appeal; and (3) to disqualify the Honorable Tom R. Cornish from any further proceedings. Kenneth A. Rushton, Trustee in the Bankruptcy Case, argues that Armstrong's writ is moot in its arguments and that no basis exists to stay any proceedings. Steppes Apartments, Ltd.'s ("Steppes"), a creditor in the Bankruptcy Case, objects to Armstrong's writ and requests that sanctions be imposed on him based on Rule 11 of the Federal Rules of Civil Procedure.

On December 13, 2002, petitioner filed a motion to proceed in forma pauperis. However, the Court denied the motion, and petitioner failed to pay the necessary filing fee pursuant to 28 U.S.C. § 1914 and DUCivR3-1. Accordingly, the Court DISMISSES Armstrong's petition for writ of mandamus without addressing its merits. Also, the Court DENIES Steppes' Request for Sanctions based on Rule 11 of the Federal Rules of Civil Procedure [3-1]. However, as Armstrong has shown a disposition for filing numerous actions in District Court involving proceedings in Bankruptcy Court, the Court ORDERS that Armstrong is enjoined from filing any motions, including new actions, in District Court that relate to proceedings in Bankruptcy Court. A district court has power pursuant to 28 U.S.C. § 1651(a) to enjoin litigants who abuse the court system by harassing their opponents. *Tripati v. Beaman, 878* F.2d 351, 352-53 (10th Cir. 1989); *see also Cotner v. Hopkins,* 795 F.2d 900, 902-03 (10th Cir. 1986) (permitting a district court to require a plaintiff to meet certain preconditions before filing future actions). All filings submitted by Armstrong subsequent to this Order will be lodged by the Clerk of the Court. Armstrong may obtain relief from this Order with any filing by first demonstrating to the Chief Judge of the Court that the filing is made in good faith and not malicious or without arguable merit.

IT IS SO ORDERED.

DATED this 25TH day of April, 2003.

/s/
Dee Benson
United States District Judge

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit
MAY 27, 2004
PATRICK FISHER
Clerk

DONALD E. ARMSTRONG, Petitioner-Appellant,	No. 03-4120 (D.C. No. 2:02-CV-1279-B) (D. Utah)
v.	
HONORABLE TOM R. CORNISH; KENNETH A. RUSHTON, Trustee, Respondents-Appellees.	

ORDER AND JUDGMENT*

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before **McCONNELL, ANDERSON**, and **BALDOCK**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Appellant Donald E. Armstrong appeals the district court's dismissal of his petition for writ of mandamus for failure to pay the filing fee. He further appeals the imposition by the district court of an injunction requiring him to meet certain preconditions before filing further actions in the district court. After our review of the record, the applicable law, and the submissions of the parties, we affirm in part and vacate in part.

Dissatisfied with the course of his Chapter 11 bankruptcy proceeding, Armstrong filed a petition for writ of mandamus in the district court requesting that the Honorable Tom R. Cornish be ordered to transmit Armstrong's emergency motion for withdrawal of the reference to the district court. He also requested an order requiring Judge Cornish to recuse from the bankruptcy matter and an order staying his Chapter 11 case and all related proceedings until certain appeals were decided by this court. Additionally, Armstrong filed a motion to proceed in forma pauperis.

The district court denied the in-forma-pauperis motion on December 10, 2002, and the record contains the clerk's certificate of service indicating that the order was either mailed, faxed, or e-mailed to Armstrong. R. Vol. I, Doc. 2 at 2. But Armstrong denies having received the order. Armstrong did not pay a filing fee for his mandamus petition, and in an order dated April 25, 2003, the

district court dismissed the mandamus petition for failure to pay the filing fee. We will address the issues surrounding this dismissal first.

Dismissal of the petition for writ of mandamus

Armstrong argues that he did not receive notice of the denial of his in-forma-pauperis motion and, therefore, did not know that his mandamus petition risked dismissal for failure to pay the filing fee. "When mail matter is properly addressed and deposited in the United States mails, with postage duly prepaid thereon, there is a rebuttable presumption of fact that it was received by the addressee in the ordinary course of mail." *Crude Oil Corp. v. Comm 'r,* 161 F.2d 809, 810 (10th Cir. 1947). The evidence in the record that the district court clerk sent the denial order to Armstrong establishes the presumption that he received it. Armstrong's denial of receipt, however, while not rebutting the presumption, does raise an issue of fact as to whether receipt actually occurred. *Bd. of County Comm 'rs v. Coleman Am. Props., Inc. (In re Am. Props., Inc.),* 30 B.R. 235, 238 (Bankr. D. Kan. 1983). In some instances, this situation would require remand to the district court for fact-finding regarding the issue of notice. Because, however, we are free to affirm the district court on any basis supported by the record, even on grounds not relied on by the district court, remand on the notice issue in this case is unnecessary. *See United States v. Sandoval, 29* F.3d 537, 542 n.6 (10th Cir. 1994). Mandamus is a drastic remedy, which is to be used only in extraordinary situations. *Allied Chem. Corp. v. Daiflon, Inc., 449* U.S. *33, 34* (1980). The requirements for issuance of a writ of mandamus are strict, *Dalton v. United States (In re Dalton), 733* F.2d 710, 716 (10th Cir. 1984), and the petitioner has the burden to show that his right to

the writ is clear and indisputable, *In re Kozeny, 236* F.3d 615, 620 (10th Cir. 2000). When a decision is committed to the discretion of the lower court, a petitioner generally will not have a clear and indisputable right to any particular result, and mandamus relief is inappropriate. *See Daiflon, 449* U.S. *at 36.*

In his petition, Armstrong first asked the district court to order Judge Cornish to transmit the motion for withdrawal of the reference to the district court. Contrary to the impression Armstrong created in his brief, Judge Cornish had transmitted the motion well before the mandamus petition was dismissed. Thus, this issue was moot at the time the district court dismissed the petition and would not have supported mandamus relief.

Rulings on motions to recuse are left to the discretion of the district court. *See Nichols v. Alley,* 71 F.3d 347, 350 (10th Cir. 1995). Because of their discretionary nature, recusal matters will rarely be the objects of mandamus relief. *See Daiflon, 449* U.S. *at* 36. Here, Armstrong's conclusory allegations of bias and the fact that Judge Cornish has ruled against him a number of times is insufficient to justify recusal, much less a writ of mandamus ordering recusal. *See Liteky v. United States,* 510 U.S. 540, 555-56 (1994). Armstrong did not establish a clear and indisputable right to mandamus relief.

Finally, Armstrong has wholly failed to meet (or even address) the exacting standards required to obtain a stay of his bankruptcy proceedings. *See McClendon v. City of Albuquerque, 79* F.3d 1014, 1020 (10th Cir. 1996). Additionally, as with recusal, whether a stay should issue is relegated to the discretion of the district court, *cf Commodity Futures Trading Comm 'n v. Chilcott Portfolio Mgmt., Inc.,* 713

F.2d 1477, 1487 (10th Cir. 1983) (finding grant of stay to be an abuse of discretion), and is thus no basis for mandamus relief.

In conclusion, because Armstrong was not entitled to mandamus relief, any error in dismissing the petition for writ of mandamus without making a finding on the issue of service was harmless. We therefore affirm the dismissal of the petition.

Imposition of Filing Restrictions

Initially, we reject Armstrong's contention that, once it dismissed the mandamus petition, the court lost jurisdiction to order filing restrictions. There is no authority for this position. By filing his petition for writ of mandamus in the district court, Armstrong availed himself of the jurisdiction of that court. That jurisdiction includes broad power to enjoin litigants who abuse the court system. *See Tripati v. Beaman, 878* F.2d 351, 352 (10th Cir. 1989) (collecting cases).

There is strong precedent establishing the inherent power of federal courts to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances. [E]ven onerous conditions may be imposed upon a litigant as long as they are designed to assist the district court in curbing the particular abusive behavior involved.

Id. (quotations and citations omitted).

Before a court can restrict litigants with a history of abusive or frivolous filings, however, it must give the litigant notice and an opportunity to respond before the order is instituted. *Id.* at 354. Additionally, "there must be some guidelines as to what plaintiff must do to obtain the court's permission to file an action." *Id.*

The court here properly explained to Armstrong

that he is prohibited from "filing any motions, including new actions, in District Court that relate to proceedings in Bankruptcy Court." R. Vol. I, Doc. 5 at 2.[2] It then advised him how to receive the court's permission to file an action: "All filings submitted by Armstrong subsequent to this order will be lodged by the Clerk of the Court. Armstrong may obtain relief from this Order with any filing by first demonstrating to the Chief Judge of the Court that the filing is made in good faith and not malicious or without arguable merit." *Id.* We refuse to join in Armstrong's speculation that, because the Chief Judge of the Utah District Court is also the judge who issued this order, Armstrong will be forever barred from the district court. In the absence of evidence to the contrary, which does not appear here, we presume that judges will do their duty in a fair and impartial manner. *See Green v. Branson,* 108 F.3d 1296, 1305 (10th Cir. 1997).

While the guidelines offered by the court are adequate to apprise Armstrong of how he can properly file future pleadings, we are unable to affirm the imposition of filing restrictions in this case because the district court failed to notify Armstrong of the possible imposition of such restrictions and failed to give him the opportunity to oppose them. We find, however, that the defect in notice was cured in a later case.

We have this day in case No. 03-4222 affirmed the imposition of filing restrictions on Armstrong substantially identical to the ones at issue here. The restrictions here, which we find to be infirm, were issued on April 25, 2003; the restrictions we uphold in No. 03-4222 were issued on August 26, 2003 and filed on August 27. To the extent that Armstrong attempted to file pleadings between April 25, 2003, and August 27, 2003, which were

---

[2] Contrary to Armstrong's contention, the district court did not deny him all access to the federal district courts in Utah. He is only barred from bringing actions relating to proceedings in the bankruptcy court.

rejected, he may resubmit those pleadings to the district court for review under the restrictions filed on August 27. We have reviewed the April 16, 2004, decision by Judge Benson to restrict the filing of pleadings in three additional bankruptcy-related matters and find no error therein.

As we have noted in several other decisions issued this day, the fact that the BAP has recently found that the bankruptcy court lacked jurisdiction to enter criminal contempt sanctions against Armstrong in a related matter has no bearing on this appeal. Armstrong's motion to proceed on appeal without prepayment of costs and fees is DENIED, and Armstrong is directed to make immediate payment of the balance of his appellate filing fee. The judgment of the district court is AFFIRMED in part and VACATED in part. The mandate shall issue forthwith.

Entered for the Court

Bobby R. Baldock
Circuit Judge

APPENDIX H

AMENDMENT I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

APPENDIX I

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re Donald Erwin Armstrong, Debtor.	Bankruptcy *Case* No. 00-26592 Chapter 11 ORDER GRANTING IN PART AND DENYING IN PART ARMSTRONG'S MOTION FOR PERMISSION TO FILE MOTION TO MODIFY PLAN OF REORGANIZATION

The motion of Donald Erwin Armstrong ("Armstrong") for permission to file motion to modify plan of reorganization came on for hearing on the 24th day of August at 1:00 p.m. before the Honorable Judge Tom R. Cornish. Armstrong appeared in behalf of himself, pm se, Steppes Apartments, Ltd. was represented by Jeffery L. Shields, and Zachary T. Shields, Keneth Rushton, the Chapter 11 Trustee of this bankruptcy proceeding (the "Trustee"), was represented by Lon Jenkins and Roger Segal, the trustee in the case of Mountain Pacific Ventures, Inc., was represented by Julie Bryant.

Although the motion before the court was a motion for permission to file a motion to modify the revised plan of reorganization, the parties argued both with respect to permission to file the motion as well as the merits of Armstrong's motion to modify the plan. That being the case, the Court will rule on the motion for permission to file and will rule with respect to the merits of Armstrong's motion to modify the confirmed plan.

Armstrong's motion seeks permission to modify a portion of the Chapter 11 plan confirmed by Order of the Court on January 31, 2002. Section 12.1.2. of the confirmed

plan provides for a Litigation Injunction which enjoins Armstrong, the Armstrong Trusts, and all other Armstrong Entities from commencing or continuing any litigation against the Steppes Parties, Roger Segal, the Trustee and any of their principals, professionals, agents, and assigns based upon (1) claims or causes of action releases pursuant to the term of the plan and the Steppes Settlement and (2) claims or causes of action based upon action taken by the Trustee, Segal, the Steppes Parties and any of those parties' principals, professionals, agents, and assigns in effectuating the Steppes Settlement and this Ran. The injunction also provides that Armstrong must apply to the Court for authority to commence or continue litigation against any of these parties or their principals, professionals, agents, or assigns.

Armstrong argues, among other things, that the Litigation Injunction should be removed from the confirmed plan because at some time in the future, Steppes or one of the Steppes Parties may bring an adversary proceeding against Armstrong, the Armstrong Trusts or one of the Armstrong Entities and if the Litigation Injunction is not removed from the plan, Armstrong, the Armstrong Trusts and/or the Armstrong Entities will be prohibited from raising defenses and counterclaims in the adversary proceeding.

Armstrong's motion was opposed arguing that the Litigation Injunction was a necessary component of the confirmed plan, that parties have relied upon the Litigation Injunction and that the Code does not be permit modification of the confirmed plan by Armstrong.

11 U.S.C. § 1127(b) provides that the reorganized debtor may modify a plan at any time after confirmation and before substantial consummation of such plan. Because Armstrong is the reorganized debtor in this case, there is nothing in § 1127 of the Code which prevents Armstrong from seeking to modify the confirmed plan.

The Court finds that the Litigation Injunction continues to be a necessary part of the confirmed plan and

that it is not in the best interests of the estate or creditors for the Litigation Injunction be removed. This decision today is further necessitated by reason that this Court has entered filing restrictions because of Armstrong's disregard for the Litigation injunction. It should be noted that the Utah District Court, Bankruptcy Appellate Panel, and the Tenth Circuit Court of Appeals have also entered filing restrictions. With respect to Armstrong's concerns that the Litigation Injunction may prohibit the filing of defenses or counterclaims to adversary proceedings filed at some time in the future by Steppes or one of the Steppes parties, the Court will treat Armstrong's motion as a motion to modify under 11 U.S.C. § 1127(b) and will grant the motion with respect to the very narrow circumstances described above. Therefore, it is hereby

ORDERED that Armstrong's motion for permission to file a motion modify the Revised Plan of Reorganization is denied; and it is further

ORDERED that in the event and only in the event that Steppes or one of the Steppes Parties brings an adversary proceeding against Armstrong, the Armstrong Trusts or one of the Armstrong Entities and any time after August 25, 2004, the Revised Plan of Reorganization will be modified to permit Armstrong, the Armstrong Trusts and/or the Armstrong Entities to raise defenses and counterclaims in the adversary proceeding or proceedings brought by Steppes or one of the Steppes parties after August 25, 2004; and it is further

ORDERED that Armstrong's motion to modify the Revised Plan of Reorganization is denied in all other respects.

Dated this 3rd day September, 2004.
BY THE COURT
/s/
Judge Tom R. Cornish
United States Bankruptcy Court

APPENDIX J
Recusals in Armstrong Litigation

Case #	State	Date	Document Title/Judge
342-156473-94	TX State	12/5/95	Michael Schattman Withdraws
348-156473-94	TX State	3/14/96	Robert McGrath Recuses
2:02CV00843	UT Federal	11/20/01	David Sam Recuses
2:02CV00843	UT Federal	11/21/01	Dale A. Kimball Recuses
2:02CV00843	UT Federal	11/26/01	Bruce S. Jenkins Recuses
2:02CV00843	UT Federal	11/26/01	J. Thomas Greene Recuses
02-CV-526	Georgia	3/5/02	G. Ernest Tidwell Recuses
2:02CV00500	UT Federal	5/24/02	Bruce S. Jenkins Recuses
2:02CV00500	UT Federal	5/29/02	Tena Campbell Recuses
2:02CV00080	UT Federal	5/29/02	Ted Stewart Recuses
2:97CV00663	UT Federal	5/29/02	Ted Stewart Recuses
2:02CV00500	UT Federal	5/30/02	J. Thomas Greene Recuses
2:02CV00515	UT Federal	5/31/02	Ted Stewart Recuses
2:02CV00500	UT Federal	6/3/02	Ted Stewart Recuses
2:02CV00080	UT Federal	6/3/02	Dale A. Kimball Recuses
2:00CV0072	UT Federal	6/3/02	Ted Stewart Recuses
2:02CV00500	UT Federal	6/4/02	Dale A. Kimball Recuses
2:97CV00663	UT Federal	6/5/02	Bruce S. Jenkins Recuses
2:97CV00663	UT Federal	6/5/02	Tena Campbell Recuses
2:97CV00663	UT Federal	6/10/02	J. Thomas Greene Recuses
2:97CV00663	UT Federal	6/10/02	Dale A. Kimball Recuses
01-2383	UT BK	6/17/02	Glen Clark Recuses
99-22588	UT BK	6/17/02	Glen Clark Recuses
99-2218	UT BK	6/17/02	Glen Clark Recuses
00-2002	UT BK	6/17/02	Glen Clark Recuses
99-2604	UT BK	6/17/02	Glen Clark Recuses

98-28921	UT BK	6/17/02	Glen Clark Recuses
99-2379	UT BK	6/17/02	Glen Clark Recuses
99-2604	UT BK	6/17/02	Glen Clark Recuses
02-29051	UT BK	6/17/02	Judith Boulden Recuses
02-2158	UT BK	6/17/02	Judith Boulden Recuses
00-2255	UT BK	6/17/02	Judith Boulden Recuses
01-2019	UT BK	6/17/02	Judith Boulden Recuses
00-26592	UT BK	6/17/02	Judith Boulden Recuses
00-2138	UT BK	6/17/02	Judith Boulden Recuses
01-2226	UT BK	6/17/02	Judith Boulden Recuses
01-2157	UT BK	6/17/02	Judith Boulden Recuses
00-2140	UT BK	6/17/02	Judith Boulden Recuses
99-22588	UT BK	6/20/02	William Thurman Recuses
2:02CV00500	UT Federal	6/20/02	Dee Benson Recuses
00-2089	UT BK	6/25/02	Glen Clark Recuses
2:97CV00663	UT Federal	7/3/02	Ted Stewart Recuses
2:02CV00515	UT Federal	7/3/02	Dale A. Kimball Recuses
2:02CV00500	UT Federal	7/8/02	Paul Cassell Recuses
2:02CV00500	UT Federal	7/9/02	Bruce S. Jenkins Recuses
2:02CV00680	UT Federal	7/17/02	Bruce S. Jenkins Recuses
2:02CV00680	UT Federal	7/17/02	Dale A. Kimball Recuses
2:02CV00683	UT Federal	7/18/02	Bruce S. Jenkins Recuses
2:02CV00683	UT Federal	7/19/02	Dale A. Kimball Recuses
2:02CV00683	UT Federal	7/22/02	Tena Campbell Recuses
3:02CV1335	TX Federal		Barbara Lynn Transferred Case
3:01CV2611 M	TX Federal		Barbara Lynn Transferred Case
2:02CV00683	UT Federal	8/12/02	Paul Cassell Recuses
2:02CV00683	UT Federal	8/15/02	Ted Stewart Recuses
2:02CV00683	UT Federal	8/20/02	Bruce S. Jenkins Recuses
2:02CV00515	UT Federal	8/22/02	Paul Cassell Recuses
2:02CV0909	UT Federal	8/23/02	Ted Stewart Recuses
2:02CV0969	UT Federal	9/10/02	Dale A. Kimball Recuses
2:02CV0969	UT Federal	9/12/02	Bruce S. Jenkins Recuses
2:02CV0969	UT Federal	9/12/02	J. Thomas Greene Recuses
2:02CV0969	UT Federal	9/13/02	David Sam Recuses
2:02CV1020	UT Federal	9/18/02	J. Thomas Greene Recuses
2:02CV00683	UT Federal	10/23/02	Bruce S. Jenkins Recuses

2:02CV1183	UT Federal	11/1/02	J. Thomas Greene Recuses
2:02CV1183	UT Federal	11/12/02	Ted Stewart Recuses
3:02CV1335	TX Federal	11/25/02	David Godbey Transferred Case
3:02CV1336	TX Federal	11/25/02	Sydney Fitzwater Transferred Case
2:02CV1406	UT Federal	1/16/03	Ted Stewart Recuses

APPENDIX K
TIMES ARMSTRONG SOUGHT PERMISSION TO FILE PLEADINGS

CASE	DATE	DESCRIPTION	
00-26592	1/18/01	Motion for Permission to Pursue 2 Violations of the Automatic Stay	1 Denied, 1 Withdrawn
00-26592	1/18/01	Motion for Permission to Pursue Motion for Relief of Stay on Unitrust Judgment	Denied
00-26592	6/20/01	Motion for Hearing re Motion for Permission to Pursue Estates' Claims against Steppes et al.	Denied
98-28921	8/29/01	DEA Motion for Permission to File Petition to Vacate Supporting Documents	Denied
00-26592	11/27/01	Motion for Permission to File Motion to Amend Complaint in Utah Federal District Court Case No. 2:01CV0642C	Denied
00-26592	8/12/02	Motion For Permission To file Complaint Against Kenneth A. Rushton	Denied
00-26592	10/11/02	Emergency Ex Parte Motion to File Notice of Appeal and/or Motion to Vacate, Stay or Modify of 3:01CV1722	Denied
00-26592	6/19/03	Motion for Permission to File Objection to Trustee's Motion for Entry of Order Imposing Vexatious Litigant Filing Restrictions and Other Procedural Limiations	Denied

APPENDIX K
TIMES ARMSTRONG SOUGHT PERMISSION TO FILE PLEADINGS

Un-assigned	3/5/04	DEA Motion to Chief Judge for Permission to File Pleadings	Denied
00-26592	3/16/04	Motion for Permission to Litigate Defenses and Claims to Rushton and Steppes Claims	Denied
02-2461	5/19/04	DEA Supplemental Opp to Dismiss and Permission to Pursue Adversary Proceeding if Necessary	Denied
00-26592	8/14/04	DEA Motion re Permission to File Motion re Modify Plan	Granted in Part; Permanently denied

APPENDIX L
TABLE OF FILING RESTRICTIONS ENTERED BY THE CIRCUIT COURTS

Circuit	# of Cases	%		%
1	6	6.74%	2	33.33%
2	0	0.00%		
3	0	0.00%		
4	0	0.00%		
5	1	1.12%		
6	11	12.36%		
7	4	4.49%		
8	0	0.00%		
9	5	5.62%	5	100.00%
10	62	69.66%	4	6.45%
11	0	0.00%		
TOTAL	**89**		**11**	

All cases involved only pro se parties.
Filing restrictions generally only applied in relation to a party filing pleadings pro se.
These same parties could file the same pleadings as long as they were represented by an attorney.

In re Wallace, 99 Fed.Appx. 870 (10th Cir. 2004); *Armstrong v. Cornish*, 102 Fed.Appx. 118 (10th Cir.2004); *Armstrong v. Cornish*, 97 Fed.Appx. 287 (10th Cir. 2004); *Derringer v. Chapel*, 98 Fed.Appx. 728 (10th Cir. 2004); ***Moore v. Busby*, 92 Fed.Appx. 699 (10th Cir. 2004);** *In re Lloyd*, 86 Fed.Appx. 771 (5th Cir. 2004); ***Marin v. Tarr*, 83 Fed.Appx. 946 (9th Cir. 2003)**; *Coando v. Westport Resources*, 85 Fed.Appx. 59 (10th Cir. 2003); *Abdelsamed v. U.S.*, 80 Fed.Appx. 90 (10th Cir. 2003); *Heimermann v. Litscher*, 337 F.3d 781 (7th Cir. 2003); *Patten v. Foley's*, 66 Fed.Appx. 188 (10th Cir. 2003); *In re Chapman*, 328 F.3d 903 (7th Cir. 2003); *Berry v. Oklahoma*, 64 Fed.Appx. 120 (10th Cir. 2003); *Glendora v. Sellers*, 57 Fed.Appx. 378 (10th Cir 2003); *Garrett v. Oklahoma Corp. Com'n*, 56 Fed.Appx. 442 (10th Cir. 2003); *Garrett v. Esser*, 53 Fed.Appx. 530 (10th Cir. 2002); *Woodruff v. U.S.*, 53 Fed.Appx. 501 (10th Cir. 2002); *Stafford v. Cimarron Elevator, Inc.*, 47 Fed.Appx. 913 (10th Cir. 2002); *Overton v. U.S.*, 48 Fed.Appx. 295 (10th Cir. 2002); *Case Management Services v. Colorado*, 47 Fed.Appx. 896 (10th Cir. 2002); *Cotner v. Boone*, 48 Fed.Appx. 287 (10th Cir. 2002); *Monroe v. Owens*, 38 Fed.Appx. 510 (10th Cir. 2002); ***Peterson v. Utah*, 30 Fed.Appx. 937 (10th Cir. 2002);** *Monroe v. Pueblo Police Dept.*, 30 Fed.Appx. 778 (10th Cir. 2002); *Shough v. Vigil*, 30 Fed.Appx. 781 (10th Cir. 2002); *Demos v. Keating*, 33 Fed.Appx. 918 (10th Cir. 2002); *Ayala v. Holmes*, 29 Fed.Appx. 548 (10th Cir. 2002); *Johnson v. Serelson*, 23 Fed.Appx. 949 (10th Cir. 2001); *Wright v. Strohman*, 21 Fed.Appx. 867 (10th Cir. 2001); *Stafford v. Arends*, 19 Fed.Appx. 790 (10th Cir. 2001); *Kinnell v. Graves*, 265 F.3d 1125 (10th Cir. 2001); *Lynn v. McClain*, 12 Fed.Appx. 676 (10th Cir, 2001); Gass v. U.S., 4 Fed.Appx. 565 (10th Cir. 2001); *Marbly v. Kay*, 238 F.3d 422 (6th Cir. 2000); *Shabazz v. Keating*, 242 F.3d 390 (10th Cir. 2000); *Sharwell v. Sherwin*, 234 F.3d 1269 (6th Cir. 2000); *Atchison v. Farrell*, 230 F.3d 1357 (6th Cir. 2000);

Stewart v. Fleet Financial, 229 F.3d 1154 (6th Cir. 2000); *Stafford v. U.S.*, 208 F.3d 1177 (10th Cir. 2000); *Green v. John Suthers*, 208 F.3d 226 (10th Cir. 2000); *Judd v. University of New Mexico*, 204 F.3d 1041 (10th Cir. 2000); *Punchard v. Luna County Com'n*, 202 F.3d 282 (10th Cir. 2000); *Levy v. Swift Transp.* Co., Inc., 194 F.3d 1320 (10th Cir. 1999); *Straley v. Galetka*, 188 F.3d 519 (10th Cir. 1999); *Carter v. Corections Corp. of America*, 187 F.3d 635 (6th Cir. 1999); *Sawchyn v. Sadie*, 187 F.3d 637 (6th Cir. 1999); *Cowhig v. West*, 181 F.3d 79 (1st Cir. 1999); *Smith v. Akron City Council*, 173 F.3d 856 (6th Cir.1999); *Boles v. Matthews*, 173 F.3d 854 (6th Cir. 1999); *Kesterson v. Luttrell*, 172 F.3d 48 (6th Cir. 1998); *Housley v. Burrows*, 162 F.3d 1173 (10th Cir.1998); *Lynn v. McClain*, 162 F.3d 1173 (10th Cir. 1998); *Kesterson v. Wilson*, 165 F.3d 27 (6th Cir. 1998); *Howard v. Mail-Well Envelope Co.*, 150 F.3d 1227 (10th Cir. 1998)); *Judd v. University of New Mexico*, 149 F.3d 1190 (10th Cir.1998); *Whaley v. Kennedy*, 145 F.3d 1347 (10th Cir. 1998); ***Mehdipour v. City of Oklahoma City*, 145 F.3d 1346 (10th Cir. 1998);** *Stewart v. U.S.*, 134 F.3d 383 (10th Cir. 1998); *Gee v. Shillinger*, 134 F.3d 382 (10th Cir. 1998); *Sule v. Story*, 124 F.3d 217 (10th Cir. 1997); *Balele v. Department of Industry, Labor and Human Relations*, 124 F.3d 203 (7th Cir. 1997); *Snyder v. Kitts*, 124 F.3d 217 (10th Cir. 1997); *Cauthon v. Rogers*, 116 F.3d 1334 (10th Cir. 1997); *Schlicher v. Thomas*, 111 F.3d 777 (10th Cir. 1997); *Washington v. Loving*, 107 F.3d 881 (10th Cir. 1997); ***Sires v. Fair*, 107 F.3d 1 (1st Cir. 1997);** *Isby v. Newkirk*, 105 F.3d 660 (7th Cir. 1996); *Cooper v. U.S.*, 99 F.3d 1149 (10th Cir. 1996); *Hays v. McLachlan*, 97 F.3d 1464 (10th Cir. 1996); ***Debbs v. California W.C.A.B.*, 87 F.3d 1318 (9th Cir. 1996); *Roscoe v. U.S.*, 83 F.3d 433 (10th Cir. 1996); *Petrick v. State of Okl.*, 77 F.3d 493 (10th Cir. 1996);** *Leaphart v. Gach*, 72 F.3d 129 (6th Cir. 1995); *Cok v. Forte*, 69 F.3d 531 (1st Cir. 1995); *Cotner v. Nichols*, 69 F.3d 547 (10th

Cir. 1995); *Washington v. Loving*, 61 F.3d 917 (10th Cir. 1995); *Washington v. Dorsey*, 60 F.3d 838 (10th Cir. 1995); *Sack v. Huggins*, 52 F.3d 338 (10th Cir.1995); *Cromar v. Irwin*, 51 F.3d 285 (10th Cir. 1995); ***Tempelman v. Beasley*, 43 F.3d 1456 (1st Cir. 1994);** *Depineda v. Zavaras*, 34 F.3d 1076 (10th Cir. 1994); *DePineda v. Hemphill*, 34 F.3d 946 (10th Cir. 1994); *Werner v. State of Utah*, 32 F.3d 1446 (10th Cir. 1994); *Hart v. U.S.*, 21 F.3d 419 (1st Cir. 1994); *In re Winslow*, 17 F.3d 314 (10th Cir. 1994); ***Yakich v. Municipal Court of San Jose*, SCC, 992 F.2d 1221 (9th Cir. 1993);** *Cok v. Family Court of Rhode Island*, 985 F.2d 32 (1st Cir. 1993); ***Addleman v. Washington Sentencing Guidelines Com'n*, 947 F.2d 949 (9th Cir. 1991); *De Long v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990) (Petition denied 498 U.S. 1001, 1990).**

Filing Restrictions were not entered or reversed in the cases in bold.

APPENDIX M

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re MARK LADEDA Debtor(s).	Case No. SA 01-11944 RA Adv. No. SA 01-1319 RA Chapter 7 DEFAULT JUDGMENT
DONALD E. ARMSTRONG, Plaintiff(s), vs. MARK LADEDA Defendant(s).	Date: 10/23/01 Time: 11:00 A.M. Place: Courtroom 6C

Based on the Defendant's failure to respond to the Complaint. THE COURT RENDERS ITS JUDGMENT, AS FOLLOWS:

1. Judgment shall be rendered in favor of Plaintiff, DONALD E. ARMSTRONG and against Defendant, MARK LADEDA.
2. Plaintiff is awarded damages of $63,112,080.04.
3. The Judgment is determined to be non-dischargeable pursuant to 523 (a) (2) and 523 (a) (6) .

Dated: 12/13/01

/s/
ROBERT W. ALBERTS
Bankruptcy Judge

APPENDIX N

Excerpt from:

In Re: Donald E. Armstrong
Chapter 11
Case No. 00-26592

CONFIRMATION ORDER
entered on January 31, 2002

Page 22

7. Discharge of the Debtor. Except as otherwise provided in the Plan and in the Bankruptcy Code, effective on the Effective Date, to the extent permissible under Section 1141 of the Bankruptcy Code, the Debtor is discharged of all prepetition debts of, claims against, liens on, and interests in the Debtor, his assets, or properties, which debts, claims, liens, and interests arose at any time before the entry of the filing of this Case. Because the Debtor is an individual debtor, confirmation of the Plan does not discharge him from any debt excepted from discharge under Section 523 of the Bankruptcy Code.

APPENDIX O

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED
Clerk, U.S. District Court
19APR 04 AM 9:49
DISTRICT OF UTAH
By: DEPUTY CLERK

IN RE:
MOTION OF DONALD E. ARMSTRONG :
TO FILE CERTAIN PLEADINGS

Pursuant to the prior order of the court, signed on April 25, 2003, restricting him from "filing any motions, including new actions, in District Court that relate to proceedings in Bankruptcy Court," pro se litigant Donald E. Armstrong presented a motion to the court on March 4, 2004 requesting permission to file further pleadings in four separate cases before the court. The court reviewed the material submitted by Mr. Armstrong and rules as follows:

For the proposed filings in Armstrong v. DeOnatvia , 2:04cv 73 TC, Armstrong v. DeOnativia, 2:02 cv 969 TC, and Armstrong v. Potter, 2:02 cv 1020 TC, the petitioner alleges that the filings are made in good faith, are not malicious and are not without arguable merit but fails to provide any specific support or documentation to support these allegations. The petitioner has not met his burden of establishing that these pleadings meet the criteria set in the prior order of the court restricting filing. The motion is denied without prejudice in regard to filings.

In Armstrong v. Ut, 2:01 cv 642 TC, the case does not relate to the Bankruptcy Court but is based upon state court actions. Pleadings in this matter are not restricted by the restriction order of April 25, 2004. Judge Campbell in her order of April 1, 2004 has addressed the filing of further pleadings by the petitioner, rendering the matter as moot.

BY THE COURT

/s/
Dee Benson, Chief Judge
April 16, 2004

(2)

Supreme Court, U.S.
FILED
NOV 24 2004
OFFICE OF THE CLERK

No. 04-411

IN THE SUPREME COURT OF THE UNITED STATES

DONALD E. ARMSTRONG, POST-BANKRUPTCY PETITION AND AS A BENEFICIARY OF THE DONALD E. ARMSTRONG FAMILY TRUST AND THE DONALD E. ARMSTRONG CHARITABLE REMAINDER UNITRUST, *Petitioner*

v.

JUDITH A. BOULDEN, BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH, et al., *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR REHEARING

DONALD E. ARMSTRONG, PRO SE
INDIVIDUALLY, POST-BANKRUPTCY PETITION AND AS BENEFICIARY OF THE DONALD E. ARMSTRONG FAMILY TRUST AND THE DONALD E. ARMSTRONG CHARITABLE REMAINDER UNITRUST
P.O. Box 1059
Park City, Utah 84060-1059
(435) 649-6477

Petitioner Donald E. Armstrong, individually and post-bankruptcy-petition and as a beneficiary of the Donald E. Armstrong Family Trust ("Family Trust") and the Donald E. Armstrong Charitable Remainder Unitrust ("Charitable Trust") (collectively the "Trusts") ("Armstrong") respectfully petitions for rehearing of the denial of the November 1, 2004 writ of certiorari to review three decisions of the Tenth Circuit Court of Appeals.

QUESTIONS PRESENTED IN PETITION FOR WRIT OF CERTIORARI

1. Are the filing restrictions entered against Donald E. Armstrong ("Armstrong") and others an unconstitutional denial of Armstrong's constitutional right to access to the Courts especially under these facts?

2. Armstrong is not requesting rehearing of Issue 2 in the original Petition.

TABLE OF CONTENTS

QUESTIONS PRESENTED IN PETITION FOR WRIT OF CERTIORARI i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

INTERVENING CIRCUMSTANCES 1

BACKGROUND 4

REASONS FOR GRANTING THE PETITION FOR REHEARING 5

ISSUES PRESENTED 7

CONCLUSION 9

CERTIFICATION OF DONALD E. ARMSTRONG, PRO SE

TABLE OF AUTHORITIES

Cases

Apache Corp. v. Moore, 517 U.S. 1217 (1996) 2

Armstrong v. Manzo, 380 U.S. 545 (1965) 2

BMW of North America, Inc. v. Gore, 517 U.S. 559, 568, (1996) 2, 3

Boddie v. Connecticut, 91 S.Ct. 780, 790 (U.S. 1971) 7

Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001) 2

Hamdi v. Rumsfeld, 124 S.Ct. 2633, 2648 (U.S.,2004) 3

Hansberry v. Lee, 311 U.S. 32, 40 (1940) 2, 3

In re Sindram, 111 S. Ct. 596, (U.S., 1991) 9

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) 2, 3

Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988) 2, 3

State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S.Ct. 1513, (U.S.,2003) 2, 3, 7

United States v. Bajakajian, 524 U.S. 321 (1998) 2, 3

Constitutional Provisions

U.S.C.A. Const. Amend. I 2, 7

INTERVENING CIRCUMSTANCES

Armstrong now has two appeals that the Utah Federal Courts continue to refuse to file after taking Armstrong's filing fees. On July 26, 2004 a Notice of Appeal was filed and filing fees paid in Adversary Proceeding 02-2461. Armstrong continues to await the docketing of this appeal. On September 20, 2004 a Notice of Appeal was filed and filing fees paid in Armstrong's Ch. 11 Bankruptcy Case 00-26592. On October 18, 2004 an Amended Notice of Appeal was filed regarding the September 20, 2004 Notice. Armstrong continues to await the docketing of this appeal.

The Tenth Circuit now has two appeals (Case Numbers 04-4123 and 04-4127) that the Tenth Circuit refuses to consider unless Armstrong pays sanctions from other cases. This is a complete denial of Armstrong's statutory and constitutional right to access to the courts. Armstrong submits that the Court may not have considered the fact that taking Armstrong's filing fees but not allowing Armstrong to be heard is a further denial of Armstrong's constitutional rights. Armstrong also filed a motion to pursue other cases that the Court has never addressed. Filing restrictions that are never considered are complete denials of the constitutional right to access to the courts.

Armstrong is being denied the right to even appear in court or file pleadings, cases or appeals of any kind. Armstrong suggests the Court may not have fully considered the impact of this. This is a complete denial of Armstrong's constitutional and statutory right to be heard and to a review of any court decisions. Armstrong is denied the right to be heard in the district or bankruptcy courts and to appeal any decisions entered against Armstrong.

This concept is akin to tying Armstrong's, or any

party representing themselves, hands behind his/their back and allowing all citizens to attack at will. It is similar to the ancient punishment of locking alleged lawbreakers to stocks allowing all citizens to throw rocks and other assorted items at them at will. This is not what this country or this Court stands for.

This Court has consistently upheld the basic due process rights of jurisdiction, notice and a full and fair opportunity to be heard before an unbiased and impartial tribunal. *Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)* ("*Mullane*"); and *Hansberry v. Lee, 311 U.S. 32, 40 (1940)* ("*Lee*"); *BMW of North America, Inc. v. Gore, 517 U.S. 559, 568, (1996)* ("*BMW*"); *State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S.Ct. 1513, (U.S.,2003)* ("*State Farm*"); *United States v. Bajakajian, 524 U.S. 321 (1998)* ("*Bajakajian*"); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001)* ("*Cooper*"); *Apache Corp. v. Moore, 517 U.S. 1217 (1996)* ("*Apache*"); *Armstrong v. Manzo, 380 U.S. 545 (1965)* ("*Manzo*"); *Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988)* ("*Peralta*"). With the denial of Armstrong's petition for writ of certiorari, this Court has refused to uphold the constitutional right to access to the courts.

The Utah Federal Courts and the Tenth Circuit Court of Appeals have entered and affirmed filing restrictions against Armstrong that completely deny Armstrong the constitutional right to access to the courts. *U.S.C.A. Const. Amend. I* These filing restrictions do not include specific findings against Armstrong but require that Armstrong cannot file any pleadings without permission. The "filing restrictions" contain two sentences and do not provide any standard for Armstrong to address. Under the facts of these cases, Armstrong is completely denied access to the courts. These filing restrictions apply to any claim or issue Armstrong might present whether it

has ever been presented or addressed in any other proceeding or not. In fact, the Utah courts have allowed Armstrongs' adversaries to pursue Armstrong while denying Armstrong the right to even defend himself.

Armstrong sought permission to file numerous pleadings according to these filing restrictions only to be refused continually—*if the court even responds.* The court generally has not responded at all to Armstrong's requests for permission. There has never been a hearing on Armstrong's requests for permission. Armstrong has never even appeared before the judge that entered the filing restrictions—Judge Dee Benson. Judge Benson has never met Armstrong.

The denial of the Petition for Writ of Certiorari will be cited as this Court's blessing on filing restrictions preventing people representing themselves from being heard in complete derogation of all of this Court's rulings upholding the right to be heard. *Mullane, Lee, BMW, State Farm, Bajakajian, Peralta* and *Hamdi v. Rumsfeld*, 124 S.Ct. 2633, 2648 (U.S.,2004) ("These essential constitutional promises [referring to due process and notice issues] may not be eroded.")

This is completely contrary to the fundamental foundation of the judiciary system of our government. The federal courts are the guardians of our Constitution to ensure the American people the promise of fairness and equal justice under the law for all citizens.[1] If lower courts are allowed to circumvent this review process, then one must conclude that the guardians have relinquished their duty; therefore, accountability for fairness, equal treatment and justice fails.

---

[1]Supreme Court of the United States, "The Court and Constitutional Interpretation", Supreme Court Historical Society, <www.supremecourtus.gov#about#constitutional interpretation> (23 Nov. 2004)

BACKGROUND

Armstrong refers the Court to the background section in the Petition for Writ of Certiorari. Armstrong merely adds to the background as necessary.

Armstrong paid the filing fees in two Utah bankruptcy court appeals and two Tenth Circuit Appeals. The Utah district court and the Tenth Circuit refuse to proceed with those appeals.

Armstrong's Utah bankruptcy case 00-26592 has no more funds to distribute to unsecured creditors and the estate never distributed any funds to unsecured creditors. There is no purpose for 00-26592 to continue except to enforce and use these filing restrictions against Armstrong. Additionally, the Utah district court filing restrictions completely deny Armstrong the right to appear in court at all. Surely this Court cannot condone these restrictions by denying the Petition for Writ of Certiorari. Even after Armstrong's Chapter 11 Bankruptcy Case 00-26592 is closed, the filing restrictions remain and Armstrong will not be permitted to appear in court for any reason without an arbitrary and discretionary blessing from a judge. This "permission" is not based on any standards or tests and is wholly arbitrary. These restrictions apply to Armstrong forever denying Armstrong a bankruptcy fresh start when there is no possible effect on the original complaining parties since the relevant bankruptcies (00-26592 and 99-22588) will be closed. Otherwise, the bankruptcy estates will have to remain open forever. At this point Steppes Apartments, Ltd. ("Steppes") can continue to pursue Armstrong forever while Armstrong can't appear in court at all.

REASONS FOR GRANTING THE PETITION FOR REHEARING

Armstrong refers the Court to the reasons for granting the petition for writ of certiorari in the Petition for Writ of Certiorari.

Armstrong is prevented from presenting ANY claim or issue to the Utah federal courts. The injunctions are not limited to issues that have already been addressed. If a new matter arises that has nothing to do with the prior matters Armstrong is still prevented from being heard. This is unconstitutional and requires this Court's attention.

The principal issue in these filing restrictions is that the parties are representing themselves. That is the only consistent factor. If these same parties engage an attorney then all of a sudden they do have the right to appear in court. When the only issue in question relates to a single class of parties this is unconstitutional discrimination requiring this Court's attention.

It is critical that this Court write an opinion addressing: 1) the extent of constitutional filing restrictions; 2) the tests for entering filing restrictions; 3) the limits of filing restrictions; 4) whether courts can enter general filing restrictions preventing parties from filing any pleading; and 5) whether court clerks can take a party's payment of filing fees and then refuse to allow the party to be heard.

These are critical issues. To deny the Petition for Writ of Certiorari is to confirm a trend prohibiting parties representing themselves from appearing in court including on matters that have never been heard. This is clearly unconstitutional and inconsistent with all of this Court's prior rulings.

It is clearly unconstitutional to allow one party to be able to pursue another while preventing the second

party from asserting their rights. How can this possibly be consistent with due process and this Court's rulings?

The law in this country appears to be completely subjective. The law is only applied for parties the courts favor. Parties representing themselves have essentially no rights. The only matters courts consider are filed by important parties, parties with extensive financial resources or favored attorneys. Parties representing themselves are entitled to the exact same rights as all other parties. The U.S. Constitution is based on this fact. The only court that can insist on these principles is this Court.

In Armstrong's experience, the courts in this country primarily rule based on who they wish to "win". Important parties and favored attorneys receive attention. Less important parties and especially parties representing themselves have no rights. It is not a matter of what the facts and the law demand but who is personally favored. Even in this Court, petitions are granted for favored attorneys and law firms and rarely for parties representing themselves. This case is an opportunity for this Court to confirm the very basis of the U.S. Constitution—that all parties, including parties representing themselves, are constitutionally entitled to be heard.

By denying the Petition for Writ of Certiorari, this Court clearly advocates these denials of due process. Forgetting about Armstrong's story and issues, all parties representing themselves in this country are entitled to due process and to be heard. These same parties are allowed to appear in court as long as they are represented by attorneys. This is clear and distinct discrimination against parties representing themselves. The only test is whether the party is represented by an attorney or not.

This is a significant and important issue for this Court to address. It is critical that this Court provide

guidance on these issues. Absent this guidance, the message conveyed is that it is perfectly acceptable to prevent parties representing themselves from being heard. Certainly this Court is not advocating this position.

This case presents compelling questions for this Court. The first question is whether the permanent filing restrictions entered in the United States District Court of the District of Utah are an unconstitutional deprivation of Armstrong's constitutional right to access to the courts. *U.S.C.A. Const. Amend. I* A subpart of that question is the almost unilateral application of filing restrictions against parties that are representing themselves. Virtually all filing restrictions are entered against pro se parties which are a clear class of persons protected by the Equal Protection Clause. *Boddie v. Connecticut, 91 S.Ct. 780, 790 (U.S. 1971)*

Essentially, these filing restrictions label a party representing themselves as an "unsavory person" preventing any full and fair opportunity to be heard on the merits for the rest of the party's life. *State Farm* at 1523 "A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business." This is clear discrimination against parties representing themselves. The First Amendment does not state that ALL parties are entitled to access to the courts ***except*** persons judges use their discretion to label as unworthy or any other group such as parties representing themselves.

ISSUES PRESENTED

1. **ARE THE FILING RESTRICTIONS ENTERED AGAINST DONALD E. ARMSTRONG ("ARMSTRONG") AND OTHERS AN UNCONSTITUTIONAL DENIAL OF**

ARMSTRONG'S CONSTITUTIONAL RIGHT TO ACCESS TO THE COURTS ESPECIALLY UNDER THESE FACTS?

Armstrong refers the Court to Issue 1 in the Petition for Writ of Certiorari.

Armstrong requests the Court to fully consider the implications of denying the Petition relating to Issue 1. Filing restrictions are being entered in the various circuits based on varying standards and tests. The Tenth Circuit has some standards but has failed to honor their own standards in the filing restrictions against Armstrong. There have been no hearings. There are no specific findings of fact. The filing restrictions apply to any pleading or appeal Armstrong could ever file, have no time limits and are not limited to the parties and issues in the original cases. This is clearly unconstitutional.

Additionally, Armstrong has now paid four appellate filing fees where the appellate courts refuse to even consider Armstrong's appeals. This is essentially a breach of contract. The federal rules of procedure statutorily provide that any party can appeal an adverse decision upon the payment of the relevant filing fee. Armstrong paid these filing fees relying on the federal rules of procedure. The courts have taken Armstrong's money but refuse to consider Armstrong's appeal. This is also unconstitutional.

All parties, including parties representing themselves, are entitled to be heard. By denying the petition for writ of certiorari, this Court has now allowed parties representing themselves to be denied the right to be heard. Surely this is an issue that warrants this Court's attention and guidance. Armstrong simply cannot believe that this Court and this country can single out a group of citizens and allow the denial of these citizens' rights to due process and to be heard.

CONCLUSION

It is important for this Court to set standards and tests to guide lower courts in entering filing restrictions, if any; the scope of filing restrictions; what standard of review is appropriate to consider filing restrictions; courts' burdens in findings to enter filing restrictions; and all other considerations. *In re Sindram, 111 S. Ct. 596, (U.S., 1991)* Armstrong suggests these issues are legal and constitutional in nature and must be reviewed *de novo*. This includes that filing restrictions cannot be imposed solely on parties representing themselves and must be applied equally to all classes of citizens.

Parties representing themselves cannot be discriminated against in this way. The only issue in these filing restrictions is that the party representing themselves are restricted but those same parties can file the same cases and claims as long as a licensed attorney will sign the pleadings. As this Court knows, many attorneys file absolutely frivolous pleadings illustrating that having a license to practice law is not a guarantee. ALL PARTIES ARE ENTITLED TO BE HEARD REGARDLESS OF ANY CLASS, INCLUDING REPRESENTING THEMSELVES.

Armstrong asserts that when any party pays an appellate filing fee in a timely manner according to the federal rules of civil procedure that party is entitled to be heard in that appeal. To unilaterally deny that party the right to be heard is a breach of contract, denial of due process and a denial of the constitutional right to be heard. Armstrong suggests this Court must address the disposition of these filing fees. If the courts refuse to consider Armstrong's appeals the courts cannot keep Armstrong's filing fees.

It is absolutely critical that this Court at least order briefing on these issues and allow these important issues to be presented to the Court. Otherwise, the denial is this Court's blessing that parties representing themselves do not have the right to appear in court or be heard.

The Petition for Rehearing on the Petition for Writ of Certiorari should be granted.

Respectfully submitted.

Donald E. Armstrong, pro se
PO Box 1059
Park City, UT 84060-1059
(435) 649-6477
November 23, 2004

CERTIFICATION OF DONALD E. ARMSTRONG, PRO SE

I, Petitioner Donald E. Armstrong, individually and post-bankruptcy-petition and as a beneficiary of the Donald E. Armstrong Family Trust and the Donald E. Armstrong Charitable Remainder Unitrust, pro se, certifies this petition for rehearing is presented in good faith and is not for purposes of delay. I certify that I have restricted this petition for rehearing to grounds not previously presented in the petition for writ of certiorari and to intervening circumstances which have occurred or which are occurring since the Petition for Writ of Certiorari was filed on September 23, 2004.

Donald E. Armstrong, pro se
PO Box 1059
Park City, UT 84060-1059
(435) 649-6477
November 23, 2004